VOLUME 6

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 131

MARGARET L. HOLT, ET AL., PETITIONERS,

vs.

ALLEGHANY CORPORATION, ET AL.

No. 132

MARGARET L. HOLT, ET AL., PETITIONERS,

vs.

ALLAN P. KIRBY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED MAY 12, 1965
CERTIORARI GRANTED JUNE 1, 1965

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

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ALLEGHANY CORPORATION, ET AL.

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[fol. 2519]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-213

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS OF ALLEGHANY CORPORATION

Baltimore, Maryland
May 3, 1950

Pursuant to notice duly given, the annual meeting of stockholders of Alleghany Corporation was duly called and held at the office of the Corporation, 1654 O'Sullivan Building, No. 10 Light Street, Baltimore, Maryland, on the 3rd day of May, 1950, at 1:00 o'clock P. M., Eastern Daylight Saving Time.

The meeting was called to order by R. W. Purcell, Vice Chairman of the Corporation, who presided as Chairman. The Secretary, J. J. Anzalone, kept the minutes thereof.

At the request of the Chairman the Secretary presented and read the notices calling the meeting and presented the affidavit of J. J. Anzalone, Secretary, showing due mailing on or before April 13, 1950 of the respective notices to each Common, each Series A Preferred and each Prior Preferred stockholder of record at the close of business on April 13, 1950. Copies of said notices and copy of said affidavit were ordered attached to these minutes and are annexed hereto.

At the request of the Chairman, the Secretary submitted lists of stockholders of the Corporation of record at the close of business April 13, 1950, as furnished and certified by J. P. Morgan & Co. Incorporated, the Stock Transfer Agent for the Corporation.

The Chairman called for the names of the stockholders present in person and requested that all of the proxies and substitutions of proxies not heretofore submitted to the Secretary be deposited with him at this time.

This having been done by the persons present, the Secretary then reported that out of a total of 4,853,932 shares of stock of the Corporation entitled to vote at the meeting, 3,653,775 shares were represented at the meeting by proxy and in person.

Thereupon, the Chairman announced that a quorum was present.

The Secretary further reported that out of a total of 4,567,797 shares of Common stock outstanding and entitled to vote at the meeting, there were present in person or represented by proxy 3,460,448 shares; that out of 250,384 shares of Series A Preferred stock outstanding and entitled to vote at this meeting for the election of two directors, 171,372 shares were represented in person or by proxy; and that out of 35,751 shares of Prior Preferred stock outstanding and entitled to vote at this meeting for the election of two directors, there were 21,955 shares present in person or by proxy.

[fol. 2520] At the request of the Chairman the Secretary read the minutes of the last annual meeting of stockholders held May 4, 1949. Upon motion duly made and seconded said minutes were approved as read as being in proper form and containing an accurate description of the action taken at the 1949 annual meeting, such approval however not constituting approval or disapproval of the subject matter.

The Chairman stated that the next order of business was the election of directors to hold office for the ensuing year and until their successors are elected and qualified. He explained that at this meeting the holders of Series A Preferred stock were entitled to elect two directors in view of the accumulations of dividends on such stock; that the holders of the Prior Preferred stock were entitled to elect two directors; and that the holders of the Common stock were entitled to elect six directors.

The Chairman announced that nominations were open for two directors to be elected by the holders of the Series A Preferred stock. Thereupon, Messrs. Andrew Van Pelt and

Robert R. Young were nominated as directors for the ensuing year. The Chairman called for further nominations. Thereupon, Mr. Herbert Schreiber nominated Herbert Schreiber and the motion was seconded by Mr. Chester Bollenbach. Mr. Bollenbach announced that he would write in the ballot the name of Dorothy Hennesey. There being no further nominations, on motion duly made, seconded and carried, the nominations were closed.

The votes of the Series A Preferred stockholders present or represented at the meeting were then cast by ballot. The Secretary, after counting the votes, announced that of the 171,372 shares of Series A Preferred stock entitled to vote at the meeting, 169,971 shares cast their vote for Mr. Robert R. Young, 169,971 shares cast their vote for Andrew Van Pelt, 1,401 shares cast their vote for Herbert Schreiber and 1,201 shares cast their vote for Dorothy Hennesey. The Chairman then declared that Andrew Van Pelt and Robert R. Young were duly elected directors of the Corporation to serve for the ensuing year and until their successors are elected and qualified.

The Chairman then called for nominations of candidates for the two offices of directors for the Corporation to be elected by the Prior Preferred stockholders of the Corporation to serve for the ensuing year and until their successors are elected and qualified.

Thereupon, Messrs. Brooks Potter and Herman R. Neff were nominated as directors for the ensuing year. The Chairman called for further nominations. There being no further nominations, on motion duly made, seconded and carried, the nominations were closed. Mr. Bollenbach announced that he would write in the name of Dorothy Hennesey and Mr. Herbert Schreiber announced he would write in the name of Herbert Schreiber.

The votes of the Prior Preferred stockholders present or represented at the meeting were then cast by ballot. The Secretary, after counting the votes, announced that of the 21,955 shares of Prior Preferred stock entitled to vote at the meeting, 21,854 shares cast their vote for Brooks

Potter and 21,854 shares cast their vote for Herman R. Neff, 101 shares cast their vote for Dorothy Hennesey and 100 shares cast their vote for Herbert Schreiber. The Chair-[fol. 2521] man then declared that Brooks Potter and Herman R. Neff were duly elected directors of the Corporation to serve for the ensuing year and until their successors are elected and qualified.

The Chairman then called for the nominations of candidates for the six directors to be elected by the holders of the Common stock of the Corporation. Thereupon, Messrs. J. J. Anzalone, Frank B. Bateman, O. Henry Briggs, Walter W. Foskett, Allan P. Kirby and R. W. Purcell were nominated as directors for the ensuing year. The Chairman called for further nominations. Mr. Bollenbach nominated Dorothy Hennesey. There being no further nominations, upon motion duly made, seconded and carried the nominations were closed.

The votes of the Common stockholders present or represented at the meeting were then cast by ballot. The Secretary, after counting the votes, announced that of the 3,460,448 shares of Common stock entitled to vote at the meeting, 800 shares were not voting, 3,458,747 shares cast their votes for J. J. Anzalone, 3,458,747 shares cast their votes for Frank B. Bateman, 3,458,747 shares cast their votes for O. Henry Briggs, 3,459,097 shares cast their votes for Walter W. Foskett, 3,459,197 shares cast their votes for Allan P. Kirby, 3,459,197 shares cast their votes for R. W. Purcell and 551 shares cast their votes for Dorothy Hennesey. Thereupon, the Chairman announced that J. J. Anzalone, Frank B. Bateman, O. Henry Briggs, Walter W. Foskett, Allan P. Kirby and R. W. Purcell were duly elected directors of the Corporation to serve for the ensuing year and until their successors are elected and qualified.

The Chairman then announced that the Board of Directors of Alleghany Corporation had selected Peat, Marwick, Mitchell & Co., independent public accountants, to make the Corporation's annual audit for the year ended December 31, 1950, and that this selection was subject to ratification

or rejection by the Common stockholders of Alleghany Corporation at this stockholders meeting.

A discussion ensued, after which the votes of the Common stockholders present or represented at the meeting were then cast by ballot. The Secretary, after counting the votes, announced that of the 3,460,448 shares entitled to vote 3,025 shares are not voting, 14,823 shares rejected the selection and 3,442,600 shares ratified the selection of Peat, Marwick, Mitchell & Co. to make the Corporation's annual audit for the year ended December 31, 1950.

The Chairman then announced that the next order of business would be the consideration by the Common stockholders of the ratification or rejection of the acceptance by the Corporation of tenders by certain officers of the Corporation, Messrs. J. J. Anzalone, Robert R. Young and Allan P. Kirby, in exchange for Investors Diversified Services, Inc. Class A common stock as described in the proxy statement. The Chairman stated that before the matter is submitted to the stockholders for a vote, he would make a statement of the purposes and background of the transaction.

The Chairman reviewed the Corporation's exchange offers and invitation for tenders to the holders of the Corporation's Prior Preferred and Series A Preferred stock, giving such holders the opportunity of exchanging such [fol. 2522] holdings for portfolio securities owned by the Corporation, explaining that the Class A stock of Investors Diversified Services, Inc. was one of the securities preliminarily included in the list which was to be offered to stockholders generally; that, upon consideration and review by counsel it was realized that it would not be possible to include such stock in the public offer because of the fact that registration of those shares under the Securities Exchange Act of 1933 would be required, and it being a small number of shares the cost of registration would not justify the benefit to the Corporation resulting therefrom. The Chairman also outlined the basis on which the Preferred stocks held by officers of the Corporation were to

be exchanged for the Investors Diversified Services, Inc. Class A common stock. At the conclusion of his statement, the Chairman invited questions with reference to the matter before submitting same to a vote.

A number of questions were asked and answered. During the course of the discussion, the question was raised by Mr. Fraser as to why the Alleghany Preferred stocks heretofore purchased and held in the treasury were not cancelled. The Chairman explained that there was no legal reason why the shares could not be cancelled but that it was a matter for submission to the Board of Directors. A motion was made by Mr. Bollenbach, seconded by Mr. Fraser, that such treasury stock be cancelled. After further discussion, the Chairman announced that while he was in doubt as to the propriety of the resolution, he had no objection to submitting it for a vote and instructed the Secretary to canvass the vote. After canvassing the vote, the Secretary announced that of the 3,460,448 shares of Common stock entitled to vote, 800 shares were not voting, 1,851 shares voted for and 3,457,797 shares voted against the motion to cancel Alleghany Corporation Preferred stocks held in its treasury.

The Chairman announced that he was stating for the record that the Corporation had no intention of re-issuing the Preferred stock and that the management proxy was voted in opposition to it for the reason that the management's proxies felt it was a matter for consideration by Alleghany Board of Directors.

A further discussion ensued with respect to the proposal for the exchange of Alleghany Preferred stocks by certain officers of the Corporation for Class A common stock of Investors Diversified Services, Inc., during which Mr. Bollenbach stated for the record that he wanted to avail Dorothy Hennesey of the same privilege that the officers are being availed of in the option or purchase of these securities; Mr. Czeisler and Mr. Fraser requesting that they also be included. On question from the Chairman if

he was suggesting that the stock be made available to all stockholders or just to Dorothy Hennesey, Mr. Bollenbach replied to all stockholders. In reply to question from Mr. Schreiber, the Chairman proceeded to explain the nature of Investors Diversified Services, Inc. and its holdings.

In response to inquiries, the Chairman reviewed for the meeting the exchanges by officers and directors of the Corporation of their holdings of Alleghany Preferred stocks for portfolio securities of the Corporation pursuant to the Corporation's invitation for tenders; and answered inquiries with respect to the agreement set forth in the proxy statement between himself and the Corporation with respect to the acquisition by him of shares of common and/or Class A common stock of Investors Diversified Services, Inc. and the possible purchase of such stock as he may acquire by the Corporation under certain circumstances. [fol. 2523] The votes of the Common stockholders present or represented at the meeting were then cast by ballot on the question of the ratification or rejection of acceptance by the Corporation of tenders by certain officers of Preferred stocks of the Corporation in exchange for Investors Diversified Services, Inc. Class A common stock owned by the Corporation. The Secretary, after counting the votes, announced that out of a total of 2,960,348 shares entitled to vote on the matter, 34,979 shares were not voting, leaving 2,925,369 shares that are voting, out of which 2,854,596 shares ratify the acceptance and 70,773 shares reject the acceptance by the Corporation of tenders by certain officers of Preferred stocks of the Corporation in exchange for Investors Diversified Services, Inc. Class A stock owned by the Corporation. In response to an inquiry from Mr. Bollenbach as to the difference between the number of shares represented at the meeting of 3,460,448 Common shares and the number announced by the Secretary as being entitled to vote of 2,960,348, the Chairman explained that as stated in the proxy statement Mr. Allan P. Kirby and Mr. J. J. Anzalone did not vote on the matter which accounts for the difference of a little over 500,000 shares.

In response to inquiry from Mr. Bollenbach, the Secretary reported that gross revocations had been received for 56,910 shares of Common stock and 1,236 shares of Series A Preferred stock. The Chairman then announced that the tender by certain officers of Preferred stocks of the Corporation in exchange for Investors Diversified Services, Inc. Class A common stock had been approved by the stockholders.

At the request of the Chairman the Secretary presented the Corporation's 1949 Annual Report, containing the financial statements of the Corporation for the year ended December 31, 1949. The Chairman stated that copies of said Annual Reports had been mailed to all stockholders and that a supply of such reports was available for anyone desiring a copy.

A discussion ensued with respect to further purchases by the Corporation of its Series A Preferred stock during which a motion was made by Mr. Goozh that at least 10,000 shares of the Corporation's Preferred stock be bought up to the asset value, said motion being seconded by Mr. Bollenbach. Mr. Bollenbach suggested that the motion be amended to the effect that there should be no limit placed on the amount of purchases of the stock, that the stock be purchased from time to time at the advantage to the Corporation, which amendment was agreed to. There followed a discussion, after which the Chairman called upon the Secretary to canvass the vote. After canvassing the vote, the Secretary announced that out of the 3,460,448 shares of Common stock entitled to vote at the meeting, 2,551 shares voted for and 3,457,897 shares voted against the motion. The Chairman stated that the management proxies were voted against the motion because it was felt that the matter should be left in the discretion of the Board of Directors.

A discussion ensued with respect to holding Alleghany Corporation annual stockholders meetings in New York, during which Mr. Bollenbach, on behalf of Dorothy Hen-

nesey, moved that the stockholders annual meeting be held in New York, which motion was seconded by Mr. Bollenbach on behalf of Bankers National Corporation. The Chairman called for a voice vote, Mr. Bollenbach, representing 451 shares of Common stock, voting in favor of the motion and all other shares present at the meeting, representing 3,459,997 shares, voting against the motion. The Chairman thereupon announced the motion had been defeated.

[fol. 2524] The Chairman thereupon called for further business, and there being none, upon motion duly made, seconded and unanimously carried, the meeting adjourned.

/s/ J. J. ANZALONE
Secretary

[fol. 2525]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-215

CERTIFICATE

I, the undersigned, David W. Wallace, Secretary of Alleghany Corporation, a Maryland corporation, do hereby certify as follows:

1. A meeting of the Board of Directors of Alleghany Corporation was held on May 18, 1950, (hereinafter called "the meeting").

2. Messrs. J. J. Anzalone, F. B. Bateman, O. Henry Briggs, Allan P. Kirby, Robert W. Purcell, Andrew Van Pelt, and Robert R. Young constituting a quorum of the Board of Directors were present at the meeting.

3. The following is a true excerpt from the minutes of the meeting:

The Chairman advised the Board that Common stockholders of the Corporation at the annual stockholders meeting May 3, 1950 had ratified the acceptance by the Corporation of tenders of Preferred stocks on January 20, 1950 by officers of the Corporation as follows: 2,420 shares of Preferred stock, Series A, tendered by Mr. Allan P. Kirby in exchange for 24,062 shares of Investors Diversified Services, Inc. Class A common stock and $27.79 cash; 2,420 shares of Series A Preferred stock tendered by Mr. Robert R. Young in exchange for 24,063 shares Investors Diversified Services, Inc. Class A common stock and $19.65 cash; and 10 shares Prior Preferred stock tendered by J. J. Anzalone in exchange for 100 shares Investors Diversified Services, Inc. Class A common stock and $2.97 cash; and that said shares of Preferred stocks so tendered and accepted are to be cancelled. After discussion, upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

WHEREAS, pursuant to the Corporation's offer to its officers to exchange its portfolio holdings of 48,825.61 shares of Investors Diversified Services, Inc. Class A common stock for shares of either the Corporation's Prior Preferred stock or Series A Preferred stock held by the officers, authorized by the Board of Directors by resolution adopted at its meeting held December 6, 1949, subject to ratification by the Common stockholders of the Corporation at the annual meeting of stockholders on May 3, 1950, the Corporation has acquired from its officers 10 shares of the Corporation's Prior Preferred Convertible stock (hereinafter called "Prior Preferred stock") in exchange for 100 shares of Investors Diversified Services, Inc. Class A common stock and $2.97 cash; and has acquired 4,840 shares of the Corporation's Cumulative 5½% Preferred stock, Series A (hereinafter called "Series A Preferred stock") in exchange for 48,125 shares of Investors Diversified Services, Inc. Class A common stock and $47.44 cash; and

[fol. 2526] WHEREAS, the foregoing exchange by the Corporation's officers was submitted to the Common stock-

holders of the Corporation at the annual meeting of stockholders of the Corporation held May 3, 1950 and said exchanges were duly ratified by said Common stockholders; and

WHEREAS, stock certificates for said 10 shares of Prior Preferred stock and said 4,840 shares of said Series A Preferred stock are held in the Corporation's treasury; and

WHEREAS, all shares of Prior Preferred and Series A Preferred stocks heretofore acquired by the Corporation pursuant to the Corporation's several exchange offers and invitation for tenders were retired by the Corporation; and

WHEREAS, said 10 shares of the Corporation's Prior Preferred stock and 4,840 shares of the Corporation's Series A Preferred stock were, in effect, purchased for retirement; and

WHEREAS, all shares of the Corporation's Prior Preferred stock and Series A Preferred stock were subject to redemption at the time of such purchase in accordance with the provisions of the Corporation's Certificate of Incorporation, as amended;

NOW, THEREFORE, BE IT

RESOLVED, pursuant to the provisions of Section 54 of the Maryland General Corporation Law and other applicable provisions of law, that 10 shares of the Corporation's Prior Preferred stock and 4,840 shares of the Corporation's Series A Preferred stock, which were acquired from officers of the Corporation pursuant to authorization of the Board of Directors dated December 6, 1949 and ratification by Common stockholders May 3, 1950, shall be finally cancelled and retired; and further

RESOLVED, that the Chairman of the Board of Directors, the President, the Vice Chairman, any Vice President or the Treasurer of the Corporation, and each of them, is hereby authorized and directed to deliver to J. P. Morgan

& Co. Incorporated, Transfer Agent for the Corporation's Prior Preferred stock and Series A Preferred stock, stock certificates aggregating 10 shares of Prior Preferred stock and 4,840 shares of Series A Preferred stock of the Corporation; and further

RESOLVED, pursuant to Section 54 of the Maryland General Corporation Law, that said 10 shares of Prior Preferred stock and said 4,840 shares of Series A Preferred [fol. 2527] stock shall thereafter have the status of authorized but unissued capital stock of the Corporation and until the classification shall have been changed, shall retain the classification obtaining before such retirement and cancellation; and further

RESOLVED, that each of the officers of the Corporation is hereby authorized to give such further instructions and advice to the Registrars and Co-Registrars and to the Co-Transfer Agent of the Corporation's Prior Preferred stock and Series A Preferred stock and to execute and deliver any and all documents and to take any and all action as he may deem necessary or advisable in order to carry out the intent and purposes of the foregoing resolutions; and further

RESOLVED, that if, in the opinion of counsel, it is necessary or advisable to execute and file appropriate Articles of Reduction or other documents, the officers of the Corporation are hereby authorized to execute and file the same with the appropriate officials of the State of Maryland.

In Witness Whereof, I have executed this certificate and affixed the seal of the Corporation this 15 day of September, 1955.

/s/ DAVID W. WALLACE
Secretary

(SEAL)

State of New York)
) ss.:
County of New York)

On this 15 day of September, 1955, in the said County of New York, before me, a Notary Public duly commissioned and qualified, in and for the State and County aforesaid, personally came David W. Wallace, personally known to me, and known to me to be the person described in and who executed the foregoing certificate, and acknowledged to me that he executed the same; and being by me duly sworn, did depose and say that he is the Secretary of the Board of Directors of the Alleghany Corporation; that as such officer he keeps the corporate minute books and seal of the said Corporation; and that the foregoing certificate truly sets forth the matters referred to therein as they appear in the minute books of the Corporation.

Subscribed and sworn to before me this 15 day of September, 1955.

/s/ Florence V. Kenny

(Notarial Seal)

Florence V. Kenny
Notary Public, State of New York
No. 24-7236200
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1956

[fol. 2528]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-221

March 14, 1949

Mr. Robert R. Young
Ocean Ridge
Boynton Beach, Florida

Dear Bob:

Ever since the question of an Alleghany investment in Investor's Syndicate first came to my attention I have been considering it and I feel that I should now tell you how I feel.

This situation looks somewhat similar to Central States Electric in size, complexity, and in the fact that the common equity is under water. The chance of making money out of Investor's Syndicate would probably be less dependent on the course of the stock market than Central States, but by and large I would think that either situation would result in a loss of time, energy and money in the event of a severe depression and I think you and I feel that we are headed that way but to what degree is the unknown factor. This being the case I am very apprehensive as to what the future, under this socialistic administration holds for us. It therefore would be with some reluctance and a great deal of doubt as to the wisdom of such a move that I would agree to Alleghany making the required (about $1,300,000) investment in Investor's Syndicate. Assuming that Alleghany's investment policy is to be based on the premise that the country is not going to have a prolonged or severe depression, then the Investor's Syndicate situation looks as if it could be worked out—although many years may be required to build enough value into this stock to make it worth appreciably more than the price Mr. Gamble seems to have in mind for the controlling block of the voting stock.

If an affirmative conclusion in this matter appears to be a probability I think we should agree on a working board and a full time management structure of one or more executives in whom we have confidence. This thought is about the same as I expressed to you a year ago in connection with Central States.

No matter who the top executives in Investor's Syndicate now are, and they may be fully competent, I think we should have one or more executives of our own choosing in there to keep us fully informed from day to day. I believe Robert McKinney, if he is willing to make it a full time job, could adequately fill position. We could if [fol. 2529] necessary decide on others later. Possibly Joe Routh, Bill Rabe, Frank Bateman and Potter (as long as he remains an Alleghany director) would make satisfactory directors.

I have yet to see the port-folio of the Investment Company and I would like to see it before reaching any conclusion in this matter. I presume it consists, more or less, of a cross section of Stock Exchange securities. If that is the case I know that you do not have a very high regard for the future enhancement of values for such securities. Under such circumstances I assume you will find it difficult to become enthusiastic over the contemplated investment.

The Investor's Syndicate deal may of course never come to a head, but I would like to have the foregoing questions resolved in advance of being asked to agree to Alleghany's purchase of the Investor's Syndicate stock.

With best regards and trusting that you agree with me on the above, I am

Sincerely yours,

/s/ ALLAN
Allan P. Kirby

APK:s
CC: Mr. R. W. Purcell

P.S. Since dictating the above I have talked with Bob Purcell and learn that the asking price is now $3,000,000, half in cash and half on something similar to a Ball note. At the last Alleghany meeting Bob said he personally would be willing to go up to $2,000,000 if necessary. If it would take five years to work out at $1,300,000 we will all be dead before we can work out a $3,000,000 deal. This together with whether we can ever work it out makes one all the more doubtful as to whether we should make this investment.

A.P.K.

[fol. 2530]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-222

April 19, 1949

To: Alleghany Corporation Board of Directors

From: Robert R. Young, Chairman

The purchase of the controlling stock of Investors Syndicate, Inc., by Alleghany Corporation, as recommended by Mr. Purcell, has received the most serious consideration by Mr. Kirby, myself and staff members.

Under direction of its board of directors Alleghany Corporation has since its organization and sale to the public in 1929 pursued a strictly limited investment policy, confining investments to certain selected railroads and related properties. Some years ago the decision was reached to reduce and diversify C&O holdings. During the war when hostilities seemed likely to be of longer duration than subsequently developed the board, after lengthy debate, selected and approved certain investments from a list of

railroads undergoing reorganization which, to our advisors, seemed undervalued in relation to other railroad securities. With return of peace unfavorable long term trends in railroads have not only been resumed but accelerated. These trends, despite our strongest efforts, seem to be irreversible; an unhappy situation which has caused us recently to further reduce our investments in our traditional field.

The time has now come, therefore, when Alleghany Corporation must broaden its investment activities to some extent, return to our earlier policy of a one or two railroad stock portfolio, or to shrink our outstanding preferred capitalization through retirements even more rapidly than we have in the past.

Since 1937 it has been the policy of the new Alleghany Corporation and its officers and directors to religiously refrain from participating in borderline activities through which emoluments might flow to those in control of such large aggregations of property. Indeed, Mr. Kirby has worked for no salary, and I have put in long hours of work at a voluntarily reduced salary, far less than my predecessor took and I previously earned or could have earned elsewhere. We can, therefore, look to no such selfish advantage—as many buyers would—to the coming into our control of the vast assets represented by Investors Syndicate and its subsidiaries. We have to look upon this side of Investors Syndicate rather as a responsibility and a trust than as an asset, an argument against, not for, its acquisition.

If we could otherwise be assured of sound management, we would far rather make our investment in Investors Syndicate, Inc., in its non-voting securities than in its voting securities, for thus we could enjoy the appreciation possibilities without the responsibility of management. For this reason, and because the non-voting shares were selling for about one-sixth the price we were asked to pay for voting shares, directors recently authorized the acquisition of non-voting stock of Investors Syndicate.

[fol. 2531] It is of course one thing to risk $5 per share in 10,000 shares of the non-voting stock of this company and quite another thing to risk $1,000,000 to $3,000,000 at $30 a share for the voting stock. Before we do the latter it is incumbent upon us to thoroughly examine all the risks and benefits involved.

There is an article in the April issue of Fortune beginning on page 79 which affirms a situation with which directors have long been familiar, that buyers of securities can no longer be sought on Park Avenue. The market, rather, is on Main Street. If the capitalistic system is to survive (and the protection of that system must be a vital function of every corporation) ways must be found to provide our economy with private venture capital and, of course, it is far healthier that such venture capital should come from the rank and file of workers than from super-salaried executives of the Louis B. Mayer and Thomas J. Watson type. Indeed, the income tax has virtually emasculated this type of stock buyer anyhow as is postulated by the following table which is taken from the March 24th "Report To The Business Executive":

How Taxes Alter Investments

Taxes, obviously, are a major factor underlying behavior of the stock market.

Tax take does two things: (1) it discourages investors in the middle and upper income brackets; (2) it encourages corporations to retain rather than to pay out income.

Dividend income, for most investors, is income added on top of income from other sources. In 1946, statistics show that 42 per cent of dividends received by individuals went to 133,746 taxpayers with $25,000 or more of gross income.

Taxes reduce sharply the amount of income retained by taxpayers in income brackets of $25,000 and above. What appear to be high yields on stocks are not high after taxes for persons in the principal investing class.

Take a look at the table below to see the aftertax yield on dividends from common stock.

At $25,000 of taxable income, dividends of 5.8 per cent yield only 3.61 per cent after taxes. A tax-free municipal bond, with a minimum of risk, yields 2.33 per cent.

At $50,000, the municipal-bond yield is only slightly below the common-stock yield.

At $100,000 and more, the investor will realize more from municipals than from common stocks.

Alleghany Corporation, which, because of its holding company characteristics, so long under criticism from Congress [fol. 2532] and other government authorities which brought death sentence to utility holding companies, has always considered its first function that of survival, which means that it must operate in the public interest. How better could Alleghany Corporation serve our System than by, through Investors Syndicate, further invigorating this wholesome evolution of capitalism toward Main Street. The surest way to reduce destructive taxation on capital is to make every worker a capitalist. Obviously Alleghany Corporation, when it furthers the public interest, must not overlook its stockholders. Since the public interest will so obviously be served by aggressive promotion of the Investors Syndicate idea, let us next examine into the advantages and disadvantages of our ownership of Investors Syndicate purely from stockholders' point of view. You have already been provided with detailed figures in the reports of Mr. Stiver and Mr. Shipman; therefore this memorandum can deal with the situation broadly.

In buying Investors Syndicate we are buying a common stock in a specialized company with the most extreme leverage. The stockholders' equity in its common stock at the present time, on the basis of market values and good accounting, is roughly $3,000,000 less than nothing. This $3,000,000 deficit can change rapidly in either direction because it represents the equity in $275,000,000 of cash and

investments behind $278,000,000 of other liabilities (including reserves). Of these assets $9,000,000 is in cash, $54,000,000 is in marketable securities and $215,000,000 is in mortgages and other unquoted paper carried at book. On some of the unquoted paper there can be, though there is not now believed to be, depreciation proportionately a good deal greater than that on the marketable securities. It will be our purpose to examine into this situation and, where correction is needed, endeavor to see that it is supplied. An appreciation of only 5½% in the $54,000,000 amount of quoted securities would wipe out the deficit. Of the non-quoted securities $115,000,000 is insured by FHA or wholly guaranteed by the Veterans Administration and carries the risk only of the government's credit. This leaves $110,000,000 of unquoted investments carrying a general mortgage risk. Directors are as well able to appraise this risk as is management. Investors Syndicate did weather the storm of the thirties and certainly with all the checks and balances in the situation today it is highly unlikely that the company would have ever again to weather anything so severe.

The risk in Investors Syndicate is one of total loss through its stock being wiped out by a run upon the institution by certificate holders in a time of panic, or by failure to have sufficient assets on hand during the days of its last maturing obligations to pay all creditors. If all certificate holders accepted cash surrender value today for their certificates there would be a balance left for stockholders of roughly $30,000,000; not a bad cushion against a run.

[fol. 2533] You will remember that in 1940 Investors Syndicate discontinued selling the type of savings certificates which carries risk to its common stock and that, thereafter its investment activities were carried on through subsidiaries and affiliates. Its risk in the subsidiaries is only to the extent that the parent company carries these subsidiaries on its books. Investors Syndicate carries these subsidiaries on its books at a figure of $4,000,000 but there is really no risk to Investors Syndicate in these subsidiaries

because they have been set up in such a way that their liabilities are self-liquidating. Its affiliates (as distinguished from subsidiaries) the three open-end investment trusts, in which Investors Syndicate has no investment, can only pay income into the parent company—they can never in any way drain income or assets away.

If we had only the subsidiaries and the affiliates to consider—the type of operation which the company has exclusively engaged in since 1940—there could be no question in our mind, except the public policy one, about the wisdom of going into this business; and obviously under such happy circumstances the price we would have to pay for this business would be multiplied many times. It is the present "book deficit" in the parent company, incurred through operations prior to 1940, which creates the present opportunity of buying a substantial interest and control of a vast enterprise for a relatively small sum.

If the parent company can be liquidated out without loss, as I believe it can, particularly if certain simple, but fundamental, changes in its investments are made which we have in mind, and unless there is a quite unforeseeable change in the demand for securities of the kind these companies sell, the buyers of the controlling stock in Investors Syndicate can about 1960 come into ownership, free of further risk and with their initial investment recouped, of the finest investment business in America, far exceeding in earning power and potentiality anything that Halsey Stuart, First of Boston, or J. P. Morgan enjoy.

At the very worst, should Investors Syndicate fail at some point to meet its last dollar of obligation, as is not probable, it is hardly likely that Alleghany Corporation could not still handle the situation in such a way as to come out in control of, and doing the investment work for, the valuable affiliates—which servicing operation should yield a handsome return on Alleghany's original investment in Investors Syndicate even though that investment in such case would have had to be written off.

From the public relations angle, a superficial observer might say that Alleghany Corporation would suffer in a major way if it were the controlling stockholder in a company which failed to meet its obligations. Of this, I have no concern if we handled the company's affairs properly, for it would be pointed out that the liabilities which brought about bankruptcy were incurred many years before Alleghany Corporation took control and, *but for Alleghany Corporation's control, the liabilities would have been greater than those that finally accrued.* In this respect the situation [fol. 2534] would not be unlike that which surrounds our Missouri Pacific investment, where we have suffered no bad public relations problem.

I do not wish to leave the implication that there is any large element of chance that Investors Syndicate will fail to meet its obligations. On the contrary, I think this contingency is remote. If a panic ensued tomorrow in which every certificate holder presented his certificates on the same day Investors Syndicate would have available to meet those claims, at present market and book values, resources equal to 115% of such possible maximum claims. Considering the nature of the assets it is hard to believe that even in the face of panic this 115% of available resources to liabilities would not meet such a concentrated demand. During the dire days of the thirties not more than a moderate proportion of outstanding certificates were surrendered for payment *in any entire year.* The possibility of a 100% run on the bank, or anything like it, in these days of controlled economies is so remote as to be unworthy of serious consideration.

If the maturities of present investments are properly spaced, and if they are not already they should be so rearranged, a general rise in interest rates, should it occur, would actually work to the equity owners' advantage by increasing the return on new investments. On the other hand, present interest rates are so low that a change in interest rates to a lower level could hardly be of proportions that would be harmful.

We then have really only to worry about the availability of assets to meet liabilities at the tailend of the maturities which will come in the early 1960's. We estimate that there would have to be a shrinkage of 25% in present investment values between now and 1965 before there could be any threat to the solvency of the company. If we exclude those items of investment which carry the government's guarantee we would have to have a shrinkage of something like 75% in 1965 in non-government guaranteed assets to threaten solvency. Even if it is conceivable that there could be such a shrinkage at some time during the period it is unlikely that the face value of these investments by 1965 should not have recovered so as to pay out these liabilities with a substantial margin to spare. Conceivably, this margin over liabilities could run up to many millions of dollars in net windfall to the stockholders.

Investors Syndicate is an extraordinary speculation of huge potentialities, in the public interest, and, I believe, in the interest of Alleghany security holders.

Mr. Kirby, Mr. Purcell, Mr. Anzalone, Mr. Shipman and I are prepared to recommend that Alleghany Corporation proceed with the enlargement of its investment in Investors Syndicate on the proper terms and conditions with the understanding with Mr. Purcell that if, as and when Alleghany should come into voting control, a management completely separate and wholly independent of Alleghany, shall be maintained in Investors Syndicate; one, of course, of the highest ability and integrity.

[fol. 2535]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-231

June 16, 1949

Mr. H. K. Bradford
Investors Diversified Services, Inc.
Roanoke Building
Minneapolis 2, Minnesota

Dear Mr. Bradford:

Inclosed is the information which has been requested preparatory to the hearing of June 28. More specifically and with particular reference to the paragraphs in your memorandum of June 10, I am sending you herewith the following:

1. Eight copies of the Agreement between Alleghany and Bertin C. Gamble.

2. Memorandum of Mr. Young to Alleghany Board of Directors.

3. Eight copies of Report of Mr. Stiver to Alleghany Corporation.

6. Eight copies of Report of Mr. Shipman and of the Supplement thereto.

11. Copy of excerpts of all Minutes of Alleghany, together with Resolutions, relating directly or indirectly to purchase of IDS stock. There are no such records pertaining to management and underwriting contract and changes in directorates.

12. Memoranda and correspondence relating to or resulting from such acquisition. In this connection, if I were

to comply literally with the request that there be included all memoranda and correspondence "resulting from such acquisition", it would involve a great volume of correspondence and other material which is purely incidental and includes such things as congratulatory letters, letters from brokers and bankers, and communications with you, Mr. Crabb and others. I have, therefore, felt that the only portion of the files which would be pertinent would be those relating to the purchase, and that material in my files which either did not relate to the purchase or which was subsequent to the purchase and did not relate to it should not be included.

Two files are included, the largest of which is complete and contains all of the material in my file which has been requested. The second file relates to the actual closing with Mr. Rotering at the First National Bank.

Additionally, there are extra copies of a lot of this material, which may be useful to you. I am sending them along in a separate folder marked "extra copies".

Additionally, in a separate file, I am sending to you copies of certain original letters relating to resignations from Boards of Directors, some of which, as you know, were [fol. 2536] accepted and others not. The originals will be in my possession at the hearing.

There are a few miscellaneous items in Mr. Young's files which are being sent to me in Cleveland and which I will forward to you after I have received them.

There is contained in this material, preliminary drafts and other items concerning the submission of which I am somewhat doubtful. However, I have no objection to the submission if you think that it is necessary or appropriate.

13. You will find in my file a report of Bear, Stearns & Co., dated October 28, 1948. This was not prepared at our request as the subject of IDS had not been broached to us

prior to November. We did not rely on or make any use of the Bear, Stearns report. The only other reports are the Shipman and Stiver reports, copies of which are inclosed. There were certain preliminary drafts of both the Shipman and Stiver reports which were not used and I assume that there is no need to encumber the record with that kind of material.

15. Following my discussion with you of last evening, concerning the affiliation chart, if we are to limit the chart to Alleghany and its principal affiliate, the Chesapeake and Ohio, you can obtain the information from the Alleghany and C&O proxy statements, copies of which are inclosed herewith. As I indicated to you yesterday, a complete affiliation study would involve considerable work and time.

As further information, the original contract with Mr. Gamble, which was prepared on April 25 and signed by me on that date, included on page 2 a purchase price for the Canadian company of $1,050,000. As you will recall, the proposed Canadian agreement in its original form contemplated the assumption by the Canadian company of the Canadian Certificates Series F and G. When I was advised that the form of transaction had been changed, I sent Mr. Fullmer a telegram dated April 27, authorizing him to change the second page of the contract accordingly, which was done. I have been through Mr. Fullmer's files and find that the only material which he has that is not included in material sent herewith are copies of the Canadian company contract—first, in its original form and, second, in its revised form. If it is important, you can of course include that in the material submitted.

Sincerely yours,

RWPURCELL:MS

[fol. 2537]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-240

Memorandum from

CHARLES SHIPMAN

8/16/49

Mr. Young —

After a fresh examination into the financial affairs of Investors Diversified Services, Inc., I felt it advisable to set down my conclusions in a confidential report, a copy of which is attached hereto.

/s/ CS

tm/

[fol. 2538]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-241

November 19, 1949

MEMORANDUM:

Re: Securities and Exchange Commission Conferences

I spent November 21 with the various members of the SEC and members of the Staff. The following matters were discussed, most of them being brought to my attention by members of the Staff:

1. Mr. Ramspeck asked me to give him a detailed statement as to how we presently handle for ISA and IDS the split payments on such certificates; for example, if one year and seven months has been paid on a certificate and an annual payment is then made, how is this applied to the certificate payments. This in-

formation is being obtained and will be sent to him immediately.

2. I discussed with Mr. Ramspeck the two pieces of sales literature which the Staff had recently criticized: "The Estate Builder Plan—Build an Estate the American Way" and "Investing for Dividends and Capital Gains." On the first piece of literature he substantially agreed with the changes and after considerable argument he said that possibly they would eliminate their objection to the use of the word "estate," but that I should explain our position on this in the letter accompanying the new piece of sales literature. Several additional suggestions were given with respect to the second pamphlet mentioned. This will be reviewed by me shortly for the purpose of trying to meet those objections. I also reviewed briefly with him the new proposed piece of sales literature for Selective Fund. The terms we used therein were in several instances objectionable which I had anticipated, and it will be necessary to revise this substantially before filing with the SEC unless we want to fight them on their specific objections to this.

3. I discovered while at the Commission that Mr. Scheppe of the Staff had written an order for the Commission to adopt, specifying methods of valuation of assets for face amount companies. With the members of the Staff including Messrs. Ramspeck and Scheppe, I discussed this proposed order and made several suggestions which they indicated they would adopt but there remained one part that they would not consider changing. The proposed rule says that preferred and common shares shall be valued at all times at their market values. This would be particularly detrimental to ISA, and the Staff had pro- [fol. 2539] posed that this same rule apply to issuing and non-issuing companies. As a matter of fact, the

Staff is still insisting upon the Commission adopting a registration form and applicable rules for both issuing and non-issuing companies and, of course, this is contrary to the arrangement with the Commission immediately prior to the Alleghany deal when they agreed that the form and rules were to cover only issuing companies such as ISA.

The Staff told me specifically that they believed the method of valuing preferred stock was proper because it had no fixed maturity—no fixed income. They feel that a company such as ISA should not own such securities—that our investments should be restricted to fixed income and fixed maturity securities. They stated frankly that if at any time our assets including market value of preferred shares were of such value that our capital stock was impaired, the Commission would have a very serious question to consider of whether they should permit us to continue the sale of certificates under those conditions. In view of this statement, the importance of this matter is readily apparent. It means that we must either persuade them to change the proposed rules or we must consider eliminating entirely preferred stocks from the portfolio of our face amount companies.

Mr. Scheppe agreed to rewrite the proposed rule incorporating some of the matters I had suggested and to forward to me a copy thereof for our further consideration, and I was assured that this matter would not again be presented to the Commission until we had a chance to review the new proposed rule and give them our comments in connection therewith. I also insisted that in any event the new rule be not made effective as to financial statements prepared as of December 31, 1949. If we can escape this it means that our first certified statement under the new rule would be December 31, 1950 with an uncertified statement being prepared June 30, 1950.

4. I discussed with the Staff the question of applying advance payment reserves and additional credit reserves of up to $26 on each certificate to the value of a paid-up certificate of ISA that is being converted to a paid-up. The Investment Company Act of 1940 provides that such amounts of advance payment reserves and additional credit reserves upon conver- [fol. 2540] sion to a paid-up certificate shall be paid to the certificate holder. These amounts are very often less than $1.00 and it has become very expensive for us to make refunds of such small amounts in so many instances. They suggested that they could see no objection to our proposal providing it did not directly conflict with the law, and they thought possibly it would not, and I am to write to Mr. Ramspeck a letter explaining this request in detail, which I shall do immediately.

5. I had long conferences with Messrs. McCormick and McIntire, members of the Commission. The other Commissioners were out of the city. Mr. McIntire told me that he would feel a great deal better about our situation if Alleghany would put enough capital into IDS to put that company on a current reserve basis.

6. I was asked whether any of our companies had purchased any securities or had intended to purchase any of any company in which Mr. Young or Alleghany had a material interest, or which was a part of one of their deals. I was specifically asked whether Mr. Young was going to use the funds of any of our companies for the promotion of his transcontinental railway.

7. Mr. Ramspeck discussed with me the necessity of seeing that each new member of our organization received a copy of the Consent Decree, and I advised

him as to the method we had adopted for seeing that this was done.

8. I was repeatedly asked as to what progress had been made as to the Gamble lawsuit.

9. Because of the feeling that there may be some bias or prejudice on the part of those on the Staff of the SEC who worked upon our matters, our registrations and other problems will be transferred on January 1, 1950 to a new group of individuals. Mr. Woodside will be the Assistant Director replacing Mr. Ramspeck, Mr. Thoresen will be the Group Chief instead of Mr. Bagley, and the new Corporation Finance Division Accountant will replace Mr. McClair. The Group Attorney will probably be Ed Worthy.

[fol. 2541]

10. The Staff discussed with me some recent complaints. In the first complaint, our representative, Harry N. Daylor of Pennsylvania was training a new representative, William Gross, and they called upon Mr. Gross's brother-in-law in Boyertown, Pennsylvania. This brother-in-law wrote to the SEC a letter which cluded the statement: "I have been advised by a representative of IDS, formerly known as Investors Syndicate, to contact you in regards to the safety of their company." The Staff of the SEC felt that this resulted from a representation by our agent that the SEC passed upon the financial condition and the safety of our company. They suggested a possible violation of Section 35 of the Investment Company Act and a violation of the Consent Decree. I had received the details of this matter from Divisional Manager M. M. Robinson of Philadelphia, and explained this in detail to the Staff. It was suggested that we get a letter from this brother-in-law, Mr. James Petrowicz, stating the facts in the matter. I

am now writing to Mr. Robinson to handle this for us.

The next complaint was from Miss Nola Johnson, Pensacola, Florida, who holds a Series "G" IDS certificate. This was sold to her by Howard Gibbs, Mobile, Alabama. Her uncle had advised her to cash it in and put the money into government bonds. She asked Gibbs about this, and he advised her against such a move. She wrote to the company for the cash surrender value and the company in February, 1949 gave her this information. In August, 1949 she again called Mr. Gibbs and advised him she was cashing the certificate. She states that Gibbs told her to wait and have her uncle write or call the SEC and find out whether the certificate she held was government protected. She says Mr. Gibbs told her the certificate was absolutely safe and that the Series "G" designation on the certificate meant "government guarantee" such as government bonds, and they are under the control of the SEC. He stated the rate was lower because the government would not let us pay more. These statements attributed to Mr. Gibbs do not appear to be reasonable, and the Staff indicated that this was also their opinion, but nevertheless, I am to check this matter thoroughly and give them a report. This is being done at the present time.

H. K. BRADFORD

HKB:MB

[fol. 2542]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-242

ROBERT W. PURCELL
3600 Terminal Tower
Cleveland 13, Ohio

January 16, 1950

Mr. Robert R. Young
The Towers
North County Road
Palm Beach, Florida

Dear Mr. Young:

Inclosed are the Summaries of Operations of the four certificate companies which I promised to send to you. You will note that the first sheet of each Summary contains an abbreviated statement of the results of operation and the remaining sheets give certain details in support of the summarized figures on the first page. Please let me know if these will answer your purpose and if you would like to receive a set each month.

Sincerely yours,

rwp;ms

[fol. 2543]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-244

January 20, 1950

Mr. Robert R. Young
The Towers
North County Road
Palm Beach, Florida

Dear Mr. Young:

The opening today (1/20/50) on Investors Diversified Services, Inc. "A" is 5¾ bid—none offered. This quotation comes out of Minneapolis through Chicago.

Sincerely yours,

Secretary to Mr. Purcell

M. Stivers

[fol. 2544]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-245

ALLEGHANY CORPORATION
Chrysler Building
New York 17, New York

January 20, 1950

Alleghany Corporation
4500 Chrysler Building
New York 17, N. Y.

Gentlemen:

Referring to the resolution of the Board of Directors of Alleghany Corporation adopted at its meeting on December 6, 1949, pursuant to which the Corporation offered to exchange its portfolio holdings consisting of 48,225.61 shares of Investors Diversified Services, Inc. Class A Common stock for outstanding Alleghany Prior Preferred and Series A Preferred stocks held by officers of the Corporation.

The market quotation of Alleghany Corporation Prior Preferred stock as of the close of business today was 80½ bid, 83 asked, mean 81.75. The market price of Investors Diversified Services, Inc. Class A Common stock today, as evidenced by quotation sheets of the National Association of Securities Dealers, was 6 bid, 6½ asked, a sale at 6½, whereas the average cost to Alleghany Corporation of the shares was $8.1453 per share.

Accordingly, I hereby offer to exchange 10 shares of Alleghany Corporation Prior Preferred stock held by me, valued at $81.75 per share (the mean of the market quotation of 80½-83) for 100 shares of Investors Diversified Services, Inc. Class A Common stock valued at $8.1453 per share (the average cost to Alleghany of such shares) and cash in the amount of $2.97.

This offer is to remain outstanding until the exchange shall have been approved or rejected by the stockholders of the Corporation at their annual meeting on May 3, 1950.

Very truly yours,

/s/ J. J. Anzalone

[fol. 2545]

In the United States District Court

Defendant Kirby Exhibit No. K-246

Alleghany Corporation
4500 Chrysler Building
New York 17, New York

January 20, 1950

Alleghany Corporation
4500 Chrysler Building
New York 17, N. Y.

Gentlemen:

This refers to the resolution of the Board of Directors of Alleghany Corporation adopted at its meeting on December 6, 1949, pursuant to which the Corporation offered to exchange its portfolio holdings consisting of 48,225.61 shares

of Investors Diversified Services, Inc., Class A Common stock for outstanding Alleghany Prior Preferred and Series A Preferred stock held by officers of the Corporation.

The market price of Alleghany Series A Preferred stock as of the close of business today was 81. The market price of Investors Diversified Services, Inc., Class A Common stock today, as evidenced by quotation sheets of the National Association of Securities Dealers, was 6 bid, 6½ asked, sale at 6½, whereas the average cost to Alleghany Corporation of the shares was 8.1453 per share.

Accordingly, I herewith offer to exchange 2,420 shares of Alleghany Corporation Series A Preferred stock, valued at $81 per share (the market price) for 24,062 shares of Investors Diversified Services, Inc., Class A Common stock valued at $8.1453 per share (the average cost to Alleghany of such shares) and cash in the amount of $27.79; this offer to remain outstanding until the exchange shall have been approved or rejected by the stockholders of the Corporation at their annual meeting on May 3, 1950.

Very truly yours,

/s/ Allan P. Kirby

[fol. 2546]

In the United States District Court

Defendant Kirby Exhibit No. K-247

Alleghany Corporation
Chrysler Building
New York 17, New York

January 20, 1950

Alleghany Corporation
4500 Chrysler Building
New York 17, N. Y.

Gentlemen:

This refers to the resolution of the Board of Directors of Alleghany Corporation adopted at its meeting on December

6, 1949, pursuant to which the Corporation offered to exchange its portfolio holdings consisting of 48,225.61 shares of Investors Diversified Services, Inc., Class A Common stock for outstanding Alleghany Prior Preferred and Series A Preferred stock held by officers of the Corporation.

The market price of Alleghany Series A Preferred stock as of the close of business today was 81. The market price of Investors Diversified Services, Inc., Class A Common stock today, as evidenced by quotation sheets of the National Association of Securities Dealers, was 6 bid, 6½ asked, sale at 6½, whereas the average cost to Alleghany Corporation of the shares was 8.1453 per share.

Accordingly, I herewith offer to exchange 2,420 shares of Alleghany Corporation Series A Preferred stock, valued at $81 per share (the market price) for 24,063 shares of Investors Diversified Services, Inc., Class A Common stock valued at $8.1453 per share (the average cost to Alleghany of such shares) and cash in the amount of $19.65; this offer to remain outstanding until the exchange shall have been approved or rejected by the stockholders of the Corporation at their annual meeting on May 3, 1950.

Very truly yours,

/s/ Robert R. Young

[fol. 2547]

In the United States District Court

Defendant Kirby Exhibit No. K-254

2/22/50

Robert R. Young
Robert. W. Purcell
Exchange of AAY-IDS Shares.

Attached is a form of letter to carry out the exchange for Investors Diversified Services Class A stock. Mr. Anza-

lone is exchanging ten shares of Prior Preferred for IDS stock and the figures inserted in the letter have been worked out by him so that you and Mr. Kirby may each receive one-half of the IDS Class A shares left after Mr. Anzalone has received his. Of course, if you and Mr. Kirby wish to split the shares in any other manner, the figures would have to be changed.

As I told you on the telephone, I do not believe that this matter requires any further Board action. I do think, however, that it would be well, if you see no objection, to advise the Board of what has been done do that the minutes could contain a memo accordingly.

[fol. 2548]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-276

INVESTORS DIVERSIFIED SERVICES, INC.
Minneapolis

January 5, 1951

Office of the President
E. E. CRABB

Personal

Mr. R. W. Purcell
3600 Terminal Tower
Cleveland 13, Ohio

Dear Bob:

This has reference to Mr. Peterson's letter to you dated December 22, 1950, in which he proposed that he should be placed upon a profit sharing basis.

The idea has a great deal of merit. In fact, it probably represents the best all-around basis for compensating top management. In this case, however, it is quite difficult to arrive at a fair and equitable arrangement because of a number of complications.

ISC has been remarkably successful on paper because of the favored treatment it has had from the parent company. It inherited a competent sales organization which was delivered to it in its entirety at its formation as contrasted with the retention of the sales organization by the parent company in the States. It has capitalized on our pioneering work with the Mutual Company, in mortgage gathering facilities, in legal matters and in numberless ways. The parent company has realized practically no direct return, all efforts to work out intercompany arrangements comparable with those between the parent and its U.S. affiliates having met with resistance. It is desirable to correct this because of the parent company's capital and reserve position. Its capital and surplus of $6,481,773 is represented almost entirely by its ownership of subs amounting to $6,405,407. Any substantial appropriation to build up certificate reserves would place our capital account in the red if we ever had to separate surplus account to show the amount thereof that is derived from taking credit for subsidiaries' profits. It behooves us, therefore, to take as much income as we properly may into the parent company's operations. If any profit sharing arrangement is established, we would need to have a carefully worked out basis, otherwise this tendency to ignore the part the parent organization has played in the success of ISC will continue.

I believe, too, that a 5% figure is out of line. I mentioned over the phone that the *trend* of ISC earnings should be studied in order to see where this might lead. Here are the net operating income figures (after taxes) for the past twelve months:

December	1949	$ 22,007	July	1950	$ 28,490
January	1950	8,316	August	"	35,731
February	"	21,911	September	"	27,753
March	"	23,436	October	"	32,010
April	"	22,571	November	"	46,155
May	"	27,587			
June	"	30,347	Total for 1950		$326,314
			Total for 1949		$222,112

[fol. 2549] The average earnings are significant. For the year 1949 they were $10,850 per month; for the first half of the year ended November 30th, they were $21,000, and for the last half $33,400. This trend probably will not continue at such a rate but could easily reach $600,000 to $800,000 per year within a few years. (The foregoing does not include capital gains during the 12 months of approximately $133,700.)

Several factors are producing this result. Fees as distributor for IMC are a big item. Net fees for November 30, 1950 were $86,000. Since sales of Mutual didn't start until late March, this figure could easily double in 1951.

Renewal loading, plus deferred loading taken into income, after commissions, has increased about $31,000 in eleven months. I believe it's reasonable to expect a net income this year (1951) of between $450,000 and $500,000. A 5% rate on that would be between $22,500 and $25,000, which together with Ted's salary would mean in the neighborhood of $50,000. This would be so far out of line with salaries paid Clark, Ryan, Berg, Bradford, Van Meter, et al, that it certainly would cause dissatisfaction.

It seems to me that Ted's most valuable contribution has been in the sales end of the business. He has built and held a good loyal bunch and has inspired them to produce an excellent volume of business. His legal experience leaves something to be desired. He has also built up a good relationship with provincial authorities which indirectly is vital to our sales operations. Better performance would help insure continuance of this relationship.

It occurs to me that possibly some type of incentive pay plan could be worked out that would be better all around. This could be based upon direct sales income which is comprised of the following from the November 30 income statement:

Item 6.	Sub. Years Loading	$399,680	
8.	Net Initial Ldg. Earned	102,146	
34.	Distributors Fees-IMC	222,237	
			$724,063

Less:

Item 24.	Comm. Pd.-Sub Years	$272,141	
35.	Comm. Pd.-IMC	136,260	
25.	Div. Ofs. Exp.-Prop	37,586	
			$445,987
	Net		$278,076

Add:

Estimate for December	30,000
Net Mutual allowance to adjust for full year	32,000
Total Adjusted	$340,076

If this formula were to be used as a base, then the following items should be used as modifying factors:

[fol. 2550]

(1) A minimum net income after taxes for the company's operations in their entirety should be established. The bonus or incentive pay would not apply until such figure was earned and the bonus should not reduce the company's net below such minimum.

(2) Quality standards should be established and the bonus increased or decreased on the basis of performance.

(3) The bonus should be subject to modification or cancellation in the event the company suffered any setbacks that might make it undesirable to pay it; for example, if we suffered substantial foreclosures, if we had any substantial depreciation in our portfolio or if any serious problems arose that indicated the desirability of conserving assets.

In brief, some such plan as this would reward Ted for the contributions he personally makes, it would not give him any further temptations to build ISC to the exclusion of our over-all picture and it would give him incentives to improve quality. Such a plan too would present less problems with our folks in the parent company.

Very truly yours,

E. E. CRABB

EEC:MB

[fol. 2551]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-278

May 7, 1951

Mr. Robert R. Young
The Greenbrier Hotel
White Sulphur Springs, W. Va.

Dear Bob:

If this letter, which I am sending to you at the Greenbrier, reaches you when it is inconvenient, you may put it in your brief case and read it later, because there is nothing urgent about it. You have, from time to time, commented

on Investors Syndicate of Canada and I thought you should have, therefore, a few comments explanatory of the 1950 performance.

At the end of 1949, the Company commenced the establishment of a reserve of 5% of the mortgage income to be set up against possible future mortgage loss. This was primarily because it was felt that there was a good chance that the appropriations to the reserve would be deductible for tax purposes. $39,285.39 was thus reserved in 1949, and in 1950, an additional $56,373.12 was similarly appropriated from income on this account. There is no feeling within the Company that this reserve is necessary, as the Company is not threatened with any mortgage losses and has had no loss experience. The deductibility of these reserves has been submitted to the taxing authorities and, while the matter has not yet been settled, it appears probable that the deduction will be disallowed; consequently, the auditors have required the establishment of a provision for taxes to take care of the contingency of disallowance of the deduction. Therefore, in 1950, there were also reserved Dominion and Provincial taxes payable on the entire mortgage reserve, including that set up in 1949.

Additionally, the Company incurred expenses aggregating $46,409.02 in the organization of Investors Mutual of Canada, Ltd., during 1950, but did not collect any management fee from Mutual for that year as the management fee commenced only after Mutual had grown to $5,000,000 in assets—only reached in 1951. This expense was abnormal in every respect as it did not relate to the sale of shares, but only to organization, qualification of the shares in the various states, printing, legal, auditing, and similar items.

But for the items mentioned above, net income of ISC would have been at least $125,000 greater in 1950 than is reported.

[fol. 2552] Income before taxes and security transactions, for the first three months of 1951, is $130,564 compared to $79,423 in the same period of 1950. After taxes, but before

security profits, the figures are $70,761 and $53,663, respectively.

Sincerely yours,

rwp:jlo
CC: Mr. Chas. Shipman

[fol. 2553]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-292

(Letterhead of Graubard & Moskovitz,
115 Broadway, New York 6, N. Y.)

December 22, 1955

Hon. Robert J. Fitzsimmons, Referee
654 Madison Avenue
New York 21, N. Y.

Re: Zenn, et al vs. Anzalone, et al

Dear Sir:

In sending this letter to you, with copies to counsel actively participating in the hearings before you, it is our hope that we may accelerate the hearings, by giving everybody concerned ample time to consider the request made in advance of the next hearing. If agreeable to you, we suggest that this letter and any answers to this letter may be placed directly in the record, thus saving the time of the Court.

Among the persons whose testimony is essential to a proper determination of the fairness, adequacy and reasonableness of the settlement are Messrs. Allan P. Kirby, J. J. Anzalone and Robert W. Purcell. Each is a present or

former director and officer of Alleghany Corporation and Mr. Kirby still serves as president of the corporation. We submit that unless you are prepared to disapprove the settlement on the basis of the record already completed, it is essential that you have the evidence of the above-named persons to assist you in making your determination. We outline the reasons therefore as applicable to each of these persons as follows:

Allan P. Kirby—Mr. Kirby is named as a defendant in this action, but he has never been served with process and has not appeared. He has never served an answer to the complaint nor has his deposition been taken. Accordingly, on the basis of the present record, it is impossible to say even that Mr. Kirby denies liability for the claims alleged against him in the complaint. Under the terms of the stipulation of settlement, if the settlement is approved, Mr. Kirby is to be given a general release. It seems to us that, unless he is willing voluntarily to appear and give evidence with regard to the claims against him, or unless the corporation, which is a party to this action, will produce its president, no general release to Mr. Kirby can properly [fol. 2554] result from this proceeding.

No defendant, not even Mr. Young, is more heavily involved than is Mr. Kirby. Not only did he share equally with Mr. Young in the benefits of the 1950 exchange of Alleghany preferred stock for Investors Diversified Services Class A common stock, but, unlike Mr. Young, he still retains almost all of his shares. Thus, Mr. Kirby is in a better position to respond to the demand for the rescission prayed for in the first cause of action than Mr. Young.

Again, in regard to the second cause of action, Mr. Kirby is accused, among other things, of depriving Alleghany Corporation of the benefit of making profits on 300,000 shares of New York Central stock. Mr. Young profited on only 100,000 shares. In the third place, Mr. Kirby, as president of Alleghany Corporation, was and is charged with direct supervision over many of the matters concerning which Mr. Young, in his capacity as chairman of the board

of directors, might be expected to have less intimate knowledge or control. His testimony is, therefore, even more vital to the proper determination of the issues than that of Mr. Young. You should not be asked to rely upon Mr. Young's speculative testimony concerning Mr. Kirby's knowledge of or participation in the affairs of Alleghany Corporation, while its President remains incommunicado. We illustrate the matters of which Mr. Kirby had direct knowledge and would presumably be in a position to testify under the folowing events taken from the first two causes of action of the complaint:

First Cause of Action—

(a) Favorable developments within I.D.S. between the date of acquisition of its stock by Alleghany in 1949 and the date of Kirby's and Young's decision to take for themselves the I. D. S. stock from Alleghany in December 1949.

(b) Factors leading to Kirby's decision to take the I.D.S. stock away from Alleghany, including reports and information obtained from persons at I.D.S. and discussions with fellow directors of Alleghany.

(c) The non-availability of I.D.S. stock on the open market and events leading up to the so-called "tender" of January 1950.

(d) Events relating to the proxy statements of April 1950.

[fol. 2555] (e) Comparative interest in I.D.S. shown by Mr. Kirby before and after his acquisition of 24,000 shares of I.D.S. stock.

(f) Discussions at meetings of Board of Directors and Executive Committee of Board of Directors in relation to the matters complained of in the first cause of action.

Second Cause of Action—

(a) Mr. Kirby's knowledge of the financial condition of New York Central Railroad in December 1953, together

with the events leading up to his decision to buy, together with Young, 200,000 shares of New York Central stock in the open market.

(b) Events of the meeting of the Board of Directors of January 19, 1954.

(c) Plans (and the reasons therefor) to have Kirby and Young or Alleghany, or Kirby, Young and Alleghany, or Kirby, Young, Alleghany Murchison and Richardson acquire the control of New York Central Railroad.

(d) Agreements between Alleghany and Murchison and Richardson of March 15, 1954, together with Alleghany's approval thereof.

(e) Agreements or understandings with Murchison and Richardson concerning the voting of stock of New York Central.

(f) The July 15, 1954 modifications of the March 15, 1954 agreements.

(g) Relationship of the I.D.S. stock transactions with Murchison Brothers and the New York Central stock transactions with the Murchison Brothers, etc., etc.

(h) The settlement agreement. As the person who has the largest financial interest in this settlement, Mr. Kirby's understanding of the settlement agreement of April 18, 1955 is most important—particularly in view of the other testimony to date.

As president of Alleghany Corporation, Mr. Kirby should have a more intimate knowledge than Mr. Young of the events described in the remaining causes of action. His [fol. 2556] testimony with regard to these matters is equally essential.

Mr. J. J. Anzalone—Like Mr. Kirby, Mr. Anzalone is a named defendant who has never been served, has never answered and who has never denied the liability charged against him. He also is to receive a general release, if the settlement is approved. Mr. Anzalone is one of the four

directors of Alleghany Corporation who had a beneficial interest in the 1950 I.D.S. transaction. Mr. Anzalone is the person who advised Alleghany on January 20, 1950 that a sale of I.D.S. Class A common stock had taken place that day, at the price of $6.50. Presumably Mr. Anzalone knows the source of his information, but there is no support in the record for this information other than that contained in a letter from Mr. Anzalone himself. Mr. Anzalone, further, is the officer of Alleghany Corporation who allegedly notified the Board of Directors that Mr. Kirby and Mr. Young had accepted the offer of the Board of Directors to make the exchange for the I.D.S. stock on January 20, 1950; and yet, on the evidence to date, the alleged acceptance on that day would have been manifestly impossible for Mr. Kirby and Mr. Young to accomplish.

Similarly, there are other matters within the purview of Mr. Anzalone, which require explanation that only his testimony can supply.

Mr. Robert W. Purcell—Mr. Purcell's testimony is needed primarily in connection with the 1950 I.D.S. transaction. He is the person who was said to have been in direct charge of I.D.S. matters for Alleghany in 1949 and thereafter. He is the person who allegedly gave certain information directly to Mr. Kirby and Mr. Young about I.D.S. He is the person who, according to Mr. Young's testimony, presumably removed from Alleghany its I.D.S. files and who has thus far refused to make available any but a small portion of these essential papers. Mr. Purcell still occupies a position of prominence at I.D.S., which is now under the control of defendants Murchison Brothers. At the request of proponents of the settlement, Mr. Purcell has seen fit to make available certain papers of I.D.S. he removed from Alleghany. We believe that, if he appears before the court or if the proponents of the settlement insist, he will make available the remaining papers. We submit that proponents can obtain Mr. Purcell's cooperation in testifying before this court if they request it.

We have been unable to serve subpoenas upon any of the above three named persons. At our request, proponents of

the settlement have advised us of the home addresses of these persons, but they have not told us when any of these [fol. 2557] persons will be within the jurisdiction of the State of New York. In fact, they have either been unable or unwilling even to tell us when Mr. Kirby will continue his duties as president of Alleghany Corporation, by coming to the office of the corporation. They have been unable or unwilling to tell us when Mr. Purcell will return to New York, even though they have previously advised the Referee that Mr. Purcell was on a trip to South America.

As we point out above, we believe that the failure of proponents to produce the three persons named, particularly Mr. Kirby and Mr. Anzalone, requires you to withhold your approval of the settlement. Of course, it is to be preferred that the settlement be either approved or disapproved on the basis of a full hearing. Therefore, notwithstanding that proponents have failed to offer these persons as witnesses or to make their whereabouts sufficiently known to us, so that we may subpoena them as our witnesses, we request that the Referee direct proponents to produce Messrs. Kirby, Purcell and Anzalone as witnesses, or to show good cause why they cannot be produced as witnesses. Certainly in the case of Mr. Kirby—the defendant with the most at stake concerning the settlement before the Court—the Court is empowered to and should advise proponents that approval of the settlement will be denied in any event, should Mr. Kirby choose to absent himself from the Court, except, of course, for good cause shown.

We respectfully request that the Referee recess all further hearings pending acknowledgement to the Court that Mr. Kirby, Mr. Purcell and Mr. Anzalone will be available as witnesses, or until such time as the Referee is satisfied that the proponents, in good faith, cannot produce said witnesses for examination. In the latter event, the Referee should rule in advance of the closing of the hearings that the benefits of the settlement, if otherwise approved, will be denied defendants Kirby and Anzalone.

Respectfully yours,

GRAUBARD & MOSKOVITZ
By /s/ SEYMOUR GRAUBARD

SG:K

1904

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-293

(See opposite) ☞

[fol. 2558]

1905

SPECIAL REPORT ON INVESTORS SYNDICATE, INC.

(SUBSIDIARY AND CONTROLLED COMPANIES)

Prepared Especially For:

Robert R. Young, Esquire
New York City

By:

SAUNDERS, STIVER & Co.

January 10, 1949

2558

OBJECTIVE REPORT ON INVESTORS SYNDICATE, INC.

(Subsidiary and Controlled Companies)

Investors Syndicate, Inc., organized in 1894, is both a holding company and an operating company, with seven subsidiary mortgage companies, one insurance company, four sales companies and a Canadian operating company. The Company also holds management and distribution contracts with three open-end mutual trust funds.

There are three principal companies: Investors Syndicate, Inc. with investments with market valuation June 30, 1948 of approximately $252,000,000, and an operating subsidiary, Investors Syndicate of America, Inc., owning investments of about $83,000,000. These two companies operate the savings accumulation plan (also sold by the Canadian subsidiary). In addition they operate a mortgage business directly and through several subsidiary mortgage companies and act as sales agents for the third principal company, Investors Mutual, Inc., owning investments with market value September 30, 1948 worth approximately $118,000,000, and for two small mutual funds.

The early history of the business is not indicative. During the early period of operations, with a stable 6% return on good mortgages easily obtained, investments were limited to that medium. Discounts and fees were available on mortgages purchased, enabling the Company to operate and sell

[fol. 2560]

savings certificates bearing interest accumulation rates of 5½% down to 4%.

The insecurity of mortgages based on high appraisals became apparent following the inflation of the first World War and the subsequent building boom in the 1920's. From about 1927 until quite recently, the Company was at times in great difficulty. Large amounts of real estate were taken over at foreclosure, and some of the earning reports in the early 1930's indicate real estate owned of upwards of $7,500,000, or in excess of 10% of the total balance sheet. In addition to mortgage difficulties, the Company found it necessary during much of the 1930's to value their portfolio at cost less a pre-determined amortization factor similar to the practice followed by the insurance companies during this period.

Investors Syndicate, Inc. has probably been deficient in assets to meet future contract maturities much of the time since about 1921. In 1944 they conducted an actuarial survey with the following result as of December 31, 1943: Installment contract reserves maintained by the Company were $160,477,317. The reserves required, by actuaries' computation, was $168,277,493, a deficiency of $7,800,176. This deficiency was determined on the basis of four years average earning return from 1940 to 1943, inclusive, which was 4.535% on total assets exclusive of income from distribution of securities for affiliated companies, earnings on wholly owned subsidiaries and profits from sale of portfolio securities.

The decline in the rate of return from investments since the middle 1930's, and particularly the decline in the rate

of return from mortgages, has presented a major problem of solvency. An analysis of contract terms show that up until 1940 the Company agreed to maintain cash, first mortgages or first deeds of trust on real estate, Government or municipal bonds and other securities that qualify for life insurance company investments in the State of New York, to the amount of $110 for each $100 of accumulated cash value on those securities outstanding. Since 1938 some contracts, and since 1940 nearly all contracts, have been written with only 100% coverage in required securities deposited. Paid-up contracts left at interest or on an annuity basis require only 100% coverage. As of December 31, 1940, cash value of certificates outstanding was $110,720,346, and in addition advanced payments on contracts and interim installments totalled $36,760,499, bearing average interest rates of approximately 4.8%. Present value of certificate contracts is not published. New operating plans to overcome these difficulties were undertaken in 1940 with the organization of Investors Syndicate of America, Inc., a wholly owned subsidiary, and the formation of an investment trust, Investors Mutual, Inc.

The present phase of Investors Syndicate, Inc. dates from the beginning of 1941 with the advent of Investors Syndicate of America, Inc. and contracts which could be operated profitably under the lower interest rates in effect in the recent past, and with the addition of the increasing management fees received from the mutual funds. This has resulted in an annual transfer to reserves to decrease the deficiency found by the actuarial study of December 31, 1943. As of December 31, 1946, this deficiency had

[fol. 2562]

been reduced to $5,720,000. This figure should have been cut in half in the past two years.

Investors Syndicate, Inc. gradually retired and became a holding company, although it is continuing to receive payments on the various plans, up to twenty years of payments, written in former years. Investors Syndicate of America, Inc. now contracts payment plans of varying maturities from six to twenty years with annual, semi-annual, quarterly or monthly payments. Investors Syndicate distributes these contracts, collects payments and pays expenses and commissions from the underwriting fees. Investors Syndicate of America, Inc. contracts require 100% collateral value against the amount of the accumulated reserve.

Obviously these installment savings certificates are salable to inexperienced buyers in large volume. They are represented and sold as 2½% to 3% certificates plus a certain participation in earnings, based upon an annual payment, with interest compounded annually. (The great majority of the payments are received quarterly or monthly, and with no supplemental share from earnings, yield much less than 2½%.) Furthermore, we understand the interest accumulation is based upon the amount placed to the reserves and accumulated for progressively increasing cash value. A certificate holder does not receive the indicated rate on the entire amount of his payments. The net interest yield to maturity, interest compounded annually on an annual payment basis for a six to nine year maturity is 2%; ten to eleven year maturity is 2.12½%; twelve to thirteen year maturity is 2.25%; fourteen to fifteen year

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maturity is 2.40%; and twenty year maturity is 2.52%. Monthly payments reduce this income value as follows:

Years to Maturity	Monthly Installment Payment	Yield to Maturity Interest Compounded Annually	Certificate Year End When Cash Value First Equals Amount Paid In
6	$16.00	1.16%	5
7	13.20	1.26%	6
8	11.20	1.34%	6
9	9.76	1.29%	7
10	7.78	1.36%	7
11	6.98	1.47%	8
12	6.28	1.65%	8
13	5.74	1.67%	9
14	5.20	1.90%	9
15	4.80	1.91%	9
20	3.34	2.15%	10

Single payment certificates are also available at a cost price of $500 for each $802.50 maturity amount, maturing 20 years from date of issue with interest compounded annually, earning 2.39%.

The current Investors Syndicate of America, Inc. Prospectus' Article 16, "Additional Credits", may be summarized as follows: Additional credits (not cumulative from year to year) are determined upon solely by the Board of Directors prior to the calendar year to be credited. They are based principally upon the prospective investment yield available for the next year. Such credits are in no way assured. The terms of the contract provide that no cash dividends may be distributed if additional credits are not determined upon, at least equal to one-half of one per cent of the cash value of certificates outstanding. Additional credits are not

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[fol. 2564]

allowed on paid-up and single payment certificates nor advanced payments and contracts under optional settlement. The record of such additional credits declared is as follows:

1942 — 1.3%
1943 — 1.3%
1944 — 1.3%
1945 — 1%
1946 — ½ of 1%
1947 — ¼ of 1%
1948 — ¼ of 1%

Additional credits may be omitted, increased or decreased in future years entirely under the discretionary powers of the Board of Directors.

It is an interesting commentary that the above certificates can be sold in large amounts in competition with United States Government Savings Bonds.

The Company has recently made arrangements with the North American Life and Casualty Company of Minnesota (unaffiliated) to insure the decreasing unpaid amounts on their savings contracts, so that in the event of death, the amount of unaccumulated reserve necessary to mature the certificate is paid to the Company, the certificate holder paying the insurance premiums per $1,000 maturity amount of investment certificate, of $.22 per month up to age 25; $.26 to age 30; $.30 to age 35; $.38 to age 40; $.50 to age 45; $.70 to age 50, and rapidly increasing rates upwards from $1.04 beyond the 50 year age group. It is interesting to note that such amounts of insurance premiums would wipe out any interest yield for the upper age brackets on the monthly

payment basis, and substantially decrease the yields for younger ages, especially for the shorter term contracts. We have made no comparison between this Company's plan and endowment insurance contracts. They should be quite similar, with an insurance contract on a 2½% reserve basis.

The mutual trust funds operate under the Investment Act of 1940 with the usual protective provisions, including "not more than 5% of the assets may be invested in the securities of any one company". Securities in Trust Funds as of September 30, 1948 aggregated approximately $132,000,000 market value, of which Investors Mutual, Inc. accounted for $120,000,000. This is a "balanced fund". As of September 30, 1948, market value of common stocks was approximately $80,000,000, Preferred stocks $40,000,000, Government bonds $4,000,000 and other bonds $15,500,000.

Investors Syndicate, Inc. has shown no large operating profits at any time. For the most part they have been nominal as reported. Since 1941, operating losses have been reported. (Small net profits were reported in most of these years which were obtained from profits in the securities portfolio.) These operating losses after all expenses and taxes have been as follows:

1942 —	$ 45,289.
1943 —	254,988.
1944 —	616,722.
1945 —	947,240.
1946 —	1,530,512.
1947 —	1,351,521.

The 1942 and 1943 losses were reported as consolidated. The remaining years were not so reported. However, in

[fol. 2566]

1947 the Investors Syndicate of America, Inc., the chief subsidiary, reported a profit of $197,188, whereas Investors Syndicate, Inc. included under earnings, "Share of subsidiaries earnings—$406,860", which apparently is the undistributed share of their earnings in all subsidiaries. It would, therefore, appear that all of these statements set forth above are on a consolidated basis.

Over recent years there has been difficulty due to a very substantial residue of old contracts written at 3½%, 4%, 4½%, 5% and 5½% (in some cases plus a share in earnings if declared) in a period of declining interest rates on income. Average interest rates on these old contracts is probably about 4.7%, as near as can be determined from figures available. Allowing approximately $12,500,000 accumulation on previously written contracts, leaves approximately a 22% growth factor in new business contracts.

In the latest month, November, we have a verbal report to the effect that the entire organization sold about $40,000,000 maturity value of contracts and about $6,000,000 in investment trust participations for that month.

Old contracts are callable, but it is the policy of the company not to call these old outstanding contracts due to good will and some techinical considerations. In the case of a Series G contract, written on a 3½% basis compounded annually, there is a peculiar clause which reads as follows:

> "ADDITIONAL CREDITS—During each calendar year, each Series G contract which shall attain a new optional settlement value in such year shall be credited, as of the date upon which such new optional

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settlement value shall be attained, with such amount as shall have been determined upon by Directors of the company not later than December thirty-first of the second preceding year, except that the first determination shall be made in the year of original issue of this series for the following calendar year. The amount so credited to Series G contracts in any year shall be at the same rate per dollar for all such new optional settlement values attained under such contracts during such year. The directors shall have absolute discretion with respect to the amount of any credits and whether any shall be determined upon thereunder, but no dividends shall be distributed to stockholders of the company in any calendar year unless the Board of Directors shall, as therein provided, have previously determined upon a credit to each Series G contract which shall attain a new optional settlement value during such year, equal to at least one-half of one per cent of such new optional settlement value. At the end of each contract year, all amounts which have been standing to the credit of this contract under the provisions thereof for not less than a contract year shall be increased by 3% thereof."

Cash value of Series G certificates outstanding as of December 31, 1946 was $32,655,238, with a maturity value of $130,929,000.

The Board of Directors has not determined upon additional credits for cash value on Series G contracts subsequent to December 31, 1943, and therefore the Company is

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presently restricted from paying cash dividends to its stockholders. It is further noted that under subsection (H) of Section 28 of the Federal Investment Company Act of 1940, Investors Syndicate, Inc. may also be restricted from paying dividends to its stockholders.

The Company show a satisfactory growth record. From 1927 to 1940, the growth was reported as a total maturity value of Contracts sold, which record is as follows:

1927 —	$ 39,712,300.
1928 —	77,186,200.
1929 —	105,185,800.
1930 —	101,953,325.
1931 —	91,460,925.
1932 —	97,778,150.
1933 —	83,746,275.
1934 —	129,409,100.
1935 —	161,577,975.
1936 —	176,309,300.
1937 —	195,802,500.
1938 —	278,647,000.
1939 —	143,279,650.
1940 —	183,303,175.

It is our understanding that the 1948 volume of new business, including all companies, should be in the neighborhood of $250,000,000 including maturity value of contracts sold.

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Since 1940 the growth of the business has been reported on the basis of cash value of certificates outstanding. This record is as follows:

Cash Values of Savings Contracts

Year	Invest. Synd. Inc.	Invest. Synd. of America Inc.	Invest. Synd. of Canada, Ltd. (Canadian Funds)	Total
1940	$124,546,224.	$ —	$ —	$124,546,224.
1941	133,844,894.	3,857,756.	603,650.	137,306,300.
1942	140,352,880.	9,865,108.	1,672,911.	151,890,899.
1943	152,411,316.	15,927,799.	3,006,277.	171,345,392.
1944	169,759,968.	23,132,579.	4,987,452.	197,879,999.
1945	191,129,468.	34,252,445.	7,571,829.	132,953,742.
1946	215,334,510.	51,315,996.	11,505,908.	278,156,414.
1947	264,647,258.	73,478,724.	16,176,192.	354,302,174.

Value of Mutual Funds Invested

Year	Invest. Mutual Inc.	Investors Selective Fund, Inc.	Invest. Stock Fund, Inc.	Total
12–31–41	$ 4,063,846.	$ —	$ —	$ 4,063,846.
12–31–42	12,612,630.	—	—	12,612,630.
12–31–43	25,873,416.	—	—	25,873,416.
12–31–44	45,976,656.	—	—	45,976,656.
1945	9–30 67,694,938.	11–30 537,239.	10–31 2,341,264.	70,573,441.
1946	9–30 86,902,503.	11–30 1,790,361.	10–31 7,590,283.	96,283,157.
1947	9–30 107,571,096.	11–30 1,966,113.	10–31 8,706,212.	118,243,421.
1948	9–30 121,256,869.	11–30 1,674,694.	10–31 9,981,671.	132,913,234.

The growth in the mutual funds in the most recent year and approximately nine months has been at a rate of about 23% per annum.

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Current Developments

The relative percentage of security investments in the Investors Syndicate Companies has been declining over the last couple of years and a larger proportion of mortgages purchased. This has been necessary in order to retain the rate of income necessary to support the operation. Under recent building costs, there has been difficulty in securing the right kind of mortgages. Early in 1948 the Company embarked on a private group housing program. Such a group has just been completed in Atlanta, Georgia, involving an expenditure in the neighborhood of $20,000,000. A second group has just been contracted in Cleveland, Ohio. It is a new development well located off of Brookpark Boulevard on the southwest side. The location is in the rear of one of our largest plant developments, namely the new General Motors Chevrolet plant now nearing completion. This is a plant of major size and will provide employment for a large number. We understand that the houses to be built are in the upper class workingman's homes in the $7,500 to $15,000 brackets and will consist of some terrace type or apartment buildings, some duplex buildings and single dwellings. For the most part, they will be three bedrooms with all modern conveniences and substantial construction. It is said that this development will cost somewhere in the $25,000,000 range. It is believed that this program will enable the Company to control the mortgages when and as the properties are sold.

Investors Syndicate, Inc. and Investors Syndicate of America, Inc. as of June 30, 1948 held mortgages of $264,362,822, of which $65.333,500 were partially guaranteed under the Servicemen's Readjustment Act of 1944 as

amended. $114,502,796 were mortgages insured by F. H. A., leaving only $84,526,526 first mortgages unsupported by a Government Agency, or 32% against 68% so guaranteed or insured. The ratio of total Assets so guaranteed or insured by Investors Syndicate of America, Inc. has increased rapidly in the past few years from 30.74% at 1946 year-end, 40.02% at 1947 year-end and 54.15% at June 30, 1948. We may assume a corresponding increase with Investors Syndicate, Inc.

Therefore, the mortgage risk factor is greatly reduced to but 32% of the mortgage paper held, although in any serious Real Estate deflation, the income account could be adversely affected.

We anticipate no serious shrinkage in Real Estate values so long as union rates for labor are maintained (the principal element of cost) and easy financing terms are in effect through these Government Agencies.

The "bloom" is off in Real Estate but in our opinion values in the near future are likely to be off only moderately from the present values. Future payments should largely equalize for any shrinkage.

We understand the Company is now negotiating the sale of about one million dollars in mortgages, not needed in their own business, at a substantial profit.

We still have a large shortage in low and medium priced homes. A moderate shrinkage of costs may be advantageous. With better values and easy financing, demand should be well sustained.

It is to be understood that the savings contracts outstanding are guaranteed by Investors Syndicate, Inc. and Investors Syndicate of America, Inc., and cash values and

maturity values are direct liabilities of those companies and are, therefore, to be treated more or less like savings bank deposits, and it is required that their funds be invested to protect the dollar value. Hence real estate mortgages are the most suitable form of securities for these funds, providing the required degree of safety with highest income available to meet these requirements. These funds, therefore, lack flexibility to a large extent.

Obviously the danger in this operation is that the total maturity values on certificates outstanding over the next twenty years are guaranteed. The total amount of these maturity values are not stated except for Investors Syndicate, Inc. which on December 31, 1946 cash value of some $214,000,000 represented the face amount of maturities totaling some $540,000,000, which is a ratio of approximately 100 to 252. Applying this ratio to the cash values of all savings contracts outstanding December 31, 1947, would indicate a guaranteed maturity value of approximately $893,000,000. Since the contracts of Investors Syndicate of America, Inc. are all of comparatively recent origin, the maturity values should be at a somewhat greater ratio. We are, therefore, of the opinion that it would be a reasonable conclusion that approximately $900,000,000 maturity value of certificates was outstanding December 31, 1947, having a present cash value of approximately $354,000,000. The Company's position is this: Similar to a savings bank or building and loan association, with something upwards of 1,000,000 accounts, average balance around $350, making forward contracts with those accounts to accept stated small deposits possibly averaging $10 a month, and mostly on a monthly basis and guaranteeing interest accumulation of

around 4½% per annum over the coming fifteen year period. It is true that this future rate of interest may decline to around 3½% at the end of the period. Suppose we presume that the contract would be for an average rate of return 4%. It has but small capital or surplus, but it guarantees the future rate of return compounded annually. With expenses on such an operation certainly running upwards of 1% or possibly more, it would seem to us a grave problem to successfully employ the funds in hand to make this guarantee good, let alone to make a profit on this business.

For the past six months, ended June 30, 1948, Investors Syndicate of America, Inc. reports the following rates of return on invested assets:

Securities	— 3.31%
Mortgages	— 3.88%
Certificate Loans	— 5.36%
Combined Average	— 3.75%

Corresponding figures for Investors Syndicate, Inc. are not available, but we may assume them to be closely parallel since these funds are all managed and handled more or less as one fund but kept in separate accounts. The earning rate for 1945 was about the same, namely 3.78%, and the combined average rate of return in 1946 and 1947 was 3.51% and 3.52% respectively. Referring to the deficiency in the reserves and the position of December 31, 1943 in the actuaries' study, based on an income rate of return projected as above of 4.53% and increasing in future years, it appears to us that there might still be some substantial deficiency in reserves notwithstanding that part of this has obviously been corrected as witness the following statement

in Investors Syndicate, Inc. Semi-Annual Report of June 30, 1947:

> "In addition to the reserves set up by charges against income at dates of last completed contract years, the Company has appropriated $2,000,000 to improve its reserves, and to that extent has made interim provisions for the increments to be provided at dates of completion of current contract years. If the Company had, during the life of the outstanding contracts, followed the accounting practice of providing for such increments currently as the contracts progress toward completion of their contract years, it would have provided additional reserves in the approximate amount of $3,880,000 at June 30, 1947. (This amount is not in addition to the differences shown in Note 1 which sets forth the results of a study of the Company's reserves by independent actuaries.) If such additional reserves had been provided, it would have resulted in an accounting deficit (as of that date the book va[illegible] of the Company's assets exceeded its contractual liabilities, and the unrealized appreciation in market value of the Company's investments, which is, of course, subject to market fluctuations, was in excess of the accounting deficits referred to). If this basis had been followed, reserve accumulation costs charged against income would have increased approximately $215,000 in the first six months of 1947, which would have had the following effect on earnings for this period: Operations of the Company, before earnings from subsidiaries and asset valuation

credits, would have resulted in a loss of $348,564.76, instead of a loss of $133,564.76; after earnings from subsidiaries and asset valuation debits, there would have been a reduction of surplus of $67,995.97, instead of an addition to surplus of $147,004.03."

Operation of all companies is under the Securities Act of 1933 and 1934 and the Investment Company Act of 1940. To qualify in a number of states, the state banking department and or the state insurance commissioner and/or the state department of securities, as the individual state laws require, call for statutory deposits against the business done in those respective states. In order to make this fair to all security holders, a proportionate amount of securities is deposited in a central depository in Minnesota, pursuant to Chapter 591 of Laws of Minnesota 1943, to cover such liabilities under contracts and certificates that are not covered by specific deposits maintained with other states. As of June 30, 1947, there was a total on deposit to meet these combined requirements of $230,901,193, composed of cash —$2,230,950, marketable securities—$93,032,468, first mortgages and liens on real estate—$135,697,775.

As of December 31, 1947, there was some $19,000,000 plus contingent liability by endorsement on mortgages sold: One of the mortgage companies reports a revolving fund of $2,500,000, the major portion of which was on loan by said mortgage company against mortgages in process.

The Securities and Exchange Commission brought suit against the Company in 1945, charging that sales representation had been made by the Company claiming their certificates to be as safe as United States Government Bonds. The suit was later dismissed.

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Certain stockholders of the Company deposited 70,127.6 shares of common stock under a voting trust agreement dated January 14, 1944. The agreement provided for three voting trustees for a period of three years. This voting trust was terminated January 14, 1947.

The auditors for the Company are George Rosseter and Company, Certified Public Accountants of Minneapolis, Minnesota. They are unknown to us. We are of the opinion that a competent actuarial study of the Company and the sufficiency of the reserve accounts should be determined. There is some confusion in the material available. The rate of return on invested assets does not conform by a wide margin with the projected income assumed in the actuarial study of 1943. That study indicated a required rate of return of approximately 4⅞% income for a break-even point, contrasted with the current rate said to be 3¼%.

Of course, the life saver in this situation is the fees and selling commissions from the operation of the investment trusts and mortgage companies. That income is evidently supplying all or a large part of the operating deficits.

The operations of Investors Syndicate, Inc. and Investors Syndicate of America, Inc., with some 120 branch offices, between 1600 and 1800 salesmen, the "said to be" over 1,000,000 individual accounts, with probably in the neighborhood of 700 or 800 employees in their home office and subsidiaries, collections of innumerable small accounts of $10 a month and less, bookkeeping compounding values and disbursing for such accounts and a similar situation in the innumerable number of residential mortgage accounts, presents all the problems of a highly detailed collection and sales business. We stress the fact that the details of operation must be tremendous.

The current rate of return, fees and the operation and growth of the investment trust business is attractive. Investors Syndicate, Inc. reported the following fees in the year 1947:

From: Investors Syndicate of America, Inc.		
Underwriting Fees	—	$4,407,746.70
Management Fees	—	158,112.66
Mortgage Collection Agreements	—	662,788.90
Certificate Collection Agreements	—	74,150.25
From: Investors Syndicate of Canada, Ltd.		
Management Fees—not itemized but approximately	—	40,000.00
From: Investors Mutual, Inc.		
Management Fees (Year ended September 30, 1947)	—	587,394.00
From: Investors Stock Fund, Inc.		
Management Fees (Year ended October 31, 1947)	—	46,743.00

Of course, the underwriting fees are largely paid out in commissions to salesmen and selling expense. The management fees present possibilities. We estimate the present rate of growth of the mutual funds as around $50,000,000 a year. Allowing for withdrawals, we believe they should show at least $40,000,000 net growth, which at one-half of one per cent management fee is $200,000. The possibilities from growth in the management of these funds is great.

We hardly need to call attention to the importance of managing the funds of these various companies, which at

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the present time aggregate roughly one-half billion dollars. For reasons stated, common stocks may not be important in the syndicate funds due to the regulations of bodies governing their operations. Common stocks in the balanced fund may average 50% of the funds engaged, or perhaps $65,000,000. The common stock fund is just well under way with approximately $10,000,000 engaged. We, therefore, have a present outlook for the management of $75,000,000 in common stocks, some $40,000,000 in bonds and some $50,000,000 in income Preferred stocks. We would seriously criticize the inclusion of Preferred stocks from the standpoint of adequate security in the syndicate portfolios. We believe they are unsuited to the proper protection of income and dollar value under difficult economic conditions.

The syndicate portfolios can hardly be considered to provide an opportunity for rapid turnover, mostly mortgages with close regulation and deposits with public depositories. The common stock portion of the mutual funds presents substantial opportunity for management operations, including purchase and sale of these securities from time to time which would provide an attractive volume of brokerage profits.

The present well-developed sales force presents one of the most attractive opportunities for development. Profits from fire insurance in the mortgage operations are already being captured by a wholly owned subsidiary. Arrangements have just been completed to sell life insurance in very small payment amounts to complete savings contracts. It is possible that this life insurance business might be further developed. This may be questioned due to the small nature

of the accounts which might tend to develop principally along the lines of industrial insurance with attendant collections and high costs. However, there is a possibility for more profitable solicitation in the regular insurance lines. This may again be questioned on the usual theory of "dispersion of effort" on the part of the salesmen in a highly competitive field. Obviously the further development of the mutual funds presents the most profitable immediate outlook. Investors Mutual, Inc. is already one of the three largest mutual funds in the business and growing much faster than any of its competitors.

The capitalization of Investors Syndicate, Inc. consists of approximately 176,000 Class A shares, Par $5, non-voting but otherwise rating equally with the common stock as to earnings and dividends except that stock dividends on Class A stock shall be paid in stock of the same class. There are approximately 115,000 shares of common outstanding—a total of approximately 291,000 shares which share equally in earnings. Therefore, a 75% interest in the common stock would represent slightly less than 30% interest in the entire earning power of the corporation.

We have no contact with top management. The active management has principally grown up in the tradition of the business. President, Mr. E. E. Crabb, was Vice President under the late Mr. J. R. Ridgeway management in the late 1920's and early 1930's. A number of new vice presidents have been added in recent years, and Mr. Galen Van Meter as Vice Chairman, a securities man. Controlled stock is held by Mr. B. C. Gamble, Chairman of Gamble-Skogmo, Inc. Mr. Gamble is said to be a very aggressive, sales-minded executive in his own company.

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The Investment Advisory Group is quite large and heavily weighted with university professor economists, including an outstanding housing expert and one of the top architectural firms. Our lack of contact with the management group limits any opinion at the present time. The only observation we have is that the Advisory Group seems rather heavily weighted with theoretical talents.

This study is incomplete and subject to error, due to the lack of direct contacts and incomplete official information. It has been extremely difficult to make a fair and complete analysis on the general nature of much of the Company's reports and other incomplete data, the recent changes in accounting methods and the complete absence of much of the early reports and unpublished data.

Prepared under the direction of G. W. Brown, Executive Vice President in charge of Analytical and Buying Departments of SAUNDERS, STIVER & Co.

/s/ G. W. BROWN

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[fol. 2581]

SUMMARY

Favorable Factors

(1) The Control of a half-billion dollar operation.

(2) The trading possibilities and control of commissions in a portfolio of some 90 millions of Bonds and Preferred stocks and some 75 millions in common stocks.

(3) The possibilities in the increasingly large management fees from the present popularity and rapid growth of the Investment Trusts.

(4) The investment advisory group and the securities and mortgage contacts may be useful in other fields.

(5) The possible expansion of housing developments and merchandising of surplus mortgage paper, with possible profit on sales and fees.

(6) The rapid rate of growth under favorable conditions should produce a very profitable rate of earnings, when and as accumulation requirements on old contracts are completed.

(7) The increasing ratio of mortgages in the Syndicate portfolios; the insurance and guarantee of Government Agencies and the merchandising of surplus mortgages, strengthen the position of the Company.

(8) The large and capable sales organization may be useful in other distributions.

9) The opportunities for able management applied to this "Empire" are great.

Unfavorable Factors

(1) The possible inadequacy of Reserves to mature contracts at present rate of income.

(2) The deficit margin of accumulating accounts in cash values of old contracts said to require actuarially, about 4⅞% to mature plus an estimated 1% pro-rata operating expense against a current rate on investment income of 3¼%.

(3) The complex nature of the contracts and of the business and the actuarial and accounting detail. The non-uniformity of contracts and rates of interest accumulation.

(4) The close regulation of business and funds by Federal and State Laws and Agencies.

(5) The apparent sales mindedness of the top Management, with an evident "Topsy" growth. An indication of a lack of broad astute management and of long-range planning.

(6) The lack of earning potential in the record and in the outlook for the immediate future.

(7) The capital structure, permitting voting control with only a minor interest in possible earnings.

(8) We are well into a period of recession. No one can predict the extent or the time element. With no over-extension of Credit, the liquid position of Banks and most large business, all-time highs in money in circulation and savings, Government extension of aids to Credit and Price support, it is difficult to expect more

than an orderly and moderate price readjustment. Markets have been discounting such an expectation for some time; whether sufficiently remains to be seen. The public reaction may materially restrict sales of the Funds and Syndicate contracts.

/s/ G.W.B.

[fol. 2584]

INVESTORS SYNDICATE, INC.

PROFIT AND LOSS ACCOUNT

	6 mos. 6-30-48	12-31-47	12-31-46
Investment and Servicing Income			
Interest earned	$4,996,986	$ 8,617,003	$ 7,227,208
Dividends rec.	543,298	1,414,704	1,723,905
Prem. mtgs. sold	382,082	1,028,817	240,495
Fees etc. earned	254,967	799,078	589,888
Other mtg. inc.	349,438		
Other income	(3)339,358	(3)735,837	(3)803,749
Mgment fees, etc.	(4)457,352	(4)855,215	(4)748,504
Gross income	7,323,484	13,450,655	11,333,751
Expenses			
Approp. to res.	(1)5,701,860	(1)10,731,791	(1)9,803,137
Int. accrued	412,893	846,440	845,553
Oper. expenses	1,058,792	2,208,221	1,649,563
Gen. & adm. exp.	1,019,600	1,684,416	1,523,688
Loss	869,660	2,020,213	2,488,190
Net Income from First Year Loading Credits & Underwriting Commissions			
Underwrit. fees	3,377,931	6,358,795	6,033,701
Selling, etc. costs	2,795,718	5,162,074	5,076,023
Total net loss	287,449	823,492	1,530,512
Prof. sec. sold	7,279	541,613	1,478,925
Prov. inc. losses		537,939	
Other inc. credits	d 54	9,911	97,573
	Loss	Loss	Profit
Net Profit or Loss	280,224	809,908	45,986
Asset value res.		17,512	34,701
Share subs. earn.	365,263	406,860	309,802
Add. contr. res.			250,000
Surp. for period	85,038	d 385,536	140,489
Earn. surp. 1-1	1,203,144	1,588,680	1,448,190
Earn. surp. 6-30	1,288,182	1,203,144	1,588,680
Earn. per share Cl. A and common	(2)d $0.96	(2)d $2.79	(2)$0.16

(1) Net appropriations to contract cash surrender value and contract reserves.

(2) Based on 175,836 Class A and 114,908 common shares, total of 290,744 shares.

(3) Contract and cert. servicing income and interest equalization credits.

(4) Invest. mgmt and collection fees from subsidiary companies.

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INVESTORS SYNDICATE, INC. BALANCE SHEETS

	Six Months June 30, 1948	Dec. 31, 1947	Dec. 31, 1946	(Consolidated) Dec. 31, 1941
ASSETS				
Cash	$ 2,308,400	$ 3,019,797	$ 3,313,081	$ 6,180,158
Bonds and Stks.	(1)55,646,621	(2)68,931,259	(2)103,709,300	31,623,180
Inv. in subsidiary	4,040,362	3,675,107	3,269,045	
F.H.A. Ins. Mtges.	96,908,954	66,201,455	48,374,345	(3)102,337,345
Real Estate Mtges.	67,791,653	65,833,288	45,042,897	33,734,217
G. I. Mortgages	34,073,626	43,308,141	34,613,492	
Notes Receivable				50,610
Accts. rec. net	4,180,110	2,749,473	1,891,832	224,120
Int. & divs. rec.	1,369,590	1,282,269	1,131,647	
Real est. contrs.				1,895,645
Lns. & ctfs., etc.	8,362,023	7,259,095	5,561,908	8,139,996
Real estate, net	160,951	52,372	66,165	998,982
Fixtures, net	423,343	414,156	343,830	250,529
Cash val. life ins.	49,981			
Other assets	131,923	123,082	91,540	192,609
Statutory dep.	2,363,776	7,917,381	3,476,011	
TOTAL	277,811,314	270,766,874	250,885,093	185,627,391
LIABILITIES				
Com. stock ($5)	574,541	574,541	574,541	574,541
Cl. A stock ($5)	879,182	879,182	879,182	879,182
Earned surplus	1,288,182	1,203,144	1,588,680	1,657,704
Contr.-Ctf. res.	273,011,803	264,647,258	243,445,903	7,018,844
Other liabil.	1,937,684	3,339,397	4,299,389	1,325,188
Deferred income		123,354	97,399	
Unearned int.	119,922			
Cash surr. value				149,192,288
Minority int.				20,532
Accrued liabil.				(4) 1,335,327
Interim install.				23,570,098
Res. exch. fluc.				53,686
TOTAL	277,811,314	270,766,874	250,885,093	185,627,391

(1) Market value: 1948—$52,825,277.
(2) Market value: 1947—$65,190,180., 1946—$104,643,845.
(3) Includes $11,894,534 loans in process of being disbursed on which Company holds firm commitment from F. H. A.
(4) Includes deferred credits.

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[fol. 2585]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-294

INVESTORS SYNDICATE, INC.—
WHAT THE ANALYSIS REVEALS

I. *The Certificate Business*

The Certificate Business of Investors Syndicate Itself

Investors Syndicate, Inc., began business in 1894, offering what have been described variously as Savings Certificates, Investment Certificates, and Participation Certificates. These certificates, placed with individual investors through the company's own sales force, were offered as a medium for systematic accumulation of definite sums of money by the holders over stated periods of time—10 or 15 years. The holders undertook to make regular installment payments (monthly, quarterly, semi-annually or annually). The company agreed that, if all payments should be made regularly to the maturity dates of certificates, it would pay holders the full *face amount* of those certificates, together with such extra credits as might have been voted by the company's directors at their discretion. The *face amount* of a certificate was fixed to equal everything that the holder was scheduled to pay in, minus "insurance premium" and service charges and plus a stipulated rate of interest, compounded annually. There were special provisions covering defaults in installment payments, settlements prior to maturity, loans against certificates, etc.

The company was successful in placing vast numbers of its certificates and has consistently fulfilled all its obligations with respect to them. Their distribution ceased at the end of 1940. But the company continues to receive installment payments on them and to service them in accordance with the contractual provisions. As of December 31, 1948, there was outstanding $476,113,150 *face amount*

of such certificates, in 171,970 separate accounts. Nearly [fol. 2586] 17% of these certificates were sold during periods of relatively high money rates and "bear interest" at 5% and 5½%. The remainder, representing the last three series sold (Series D, Series F and Series G) "bear interest" at 4½%, 4% and 3% respectively. Here is the breakdown:

Face Amount of I.S. Certificates Outstanding

	5-5½% Rate	4½% Rate	4% Rate	3% Rate
Face Am't	$80,105,650	$41,272,500	$237,792,250	$116,942,750
% of Total	16.82%	8.67%	49.94%	24.56%

Installment payments received by Investors Syndicate on its certificates were and are invested with the company effectively obligated to maintain investments, at 110% of the cash surrender value of its certificates, in first mortgages on real estate and securities eligible for life insurance companies in New York. As of December 31, 1948, more than 77% of the investment portfolio was in mortgages. The balance was distributed as follows: cash and U.S. Government securities, 5.05%; other bonds, 9.70%; preferred stock, 9.26%; common stocks, 0.11%.

Chiefly because of existing low money rates, the company in recent years has been unable to obtain a sufficient return on its investments to cover the cost of its certificate money. In 1948 its investment return averaged 4.039%, while the average cost of its certificate money was 4.452% (without any allowance for general overhead expense). In 1947 the return on investments was 3.869%, and the cost of certificate money 4.446%.

The average cost of certificate money may be expected to decline steadily from here on—as more and more of the earlier-issued high-interest certificates mature or are otherwise eliminated. Thus the discrepancy in the investment [fol. 2587] return may be expected to narrow, whether or not there is any rise in money rates.

Eventually, of course, all of the I.S. certificates will be eliminated. Following is a schedule of the *face amount* (maturity value) of the installment certificates indicated to be left outstanding at the end of each of the years 1949 through 1956:

1949	1950	1951	1952
$448,502,300	$408,022,500	$356,012,700	$301,072,300
1953	1954	1955	1956
$233,861,600	$173,474,200	$119,955,100	$ 85,504,800

The Certificate Business of Investors Syndicate of America

Although Investors Syndicate, Inc. stopped distributing its own certificates at the end of 1940 and the I.S. certificates are now a liquidating proposition, the company is still in the business of selling Investment Certificates—for the account of a wholly-owned subsidiary, Investors Syndicate of America, Inc. known within the enterprise as I.S.A. This subsidiary, formed in 1941, offers installment certificates maturing in 6 to 20 years and providing the holder with a maturity yield (comp. annually) of 1.16% to 2.52%, depending on the maturity and whether the payments are monthly, quarterly, semi-annually or annually. Nothwithstanding its relatively brief history, I.S.A. had outstanding at the end of 1948 a total of $594,461,000 face amount of installment certificates, in 120,401 separate accounts.

In conformity with the Investment Company Act of 1940, I.S.A. is required to maintain cash and qualified investments equal to *not less than 100%* of its liabilities on all outstanding certificates. Qualified investments include securities legal for life insurance companies in the District of Columbia, first mortgages on real estate worth at least [fol. 2588] 40% more than the amount loaned thereon, and other mortgages carrying Veterans Administration guarantee. As of December 31, 1948, the I.S.A. investment portfolio was made up as follows: mortgages, 77.14%; cash and U.S. Government securities, 1.51%; other bonds, 7.80%; preferred stocks, 13.06%; common stocks, 0.49%.

The corporate bonds and stocks in the I.S.A. portfolio are somewhat more conservative in type than those held by

I.S. I.S.A.'s investment return averaged only 3.712% in 1948 (and 3.419% in 1947). On the other hand, the average cost of its certificate money was only 2.782% in 1948 (and 2.826% in 1947). Thus, although I.S.A.'s investment return was a good deal lower than I.S.'s, it was $826,718 more than the cost of certificate money in 1948 (and $410,614 more in 1947). After adding in income from certificate servicing, etc., and deducting all expenses and charges (including fees paid to the parent company), I.S.A. had a final 1948 net income of $438,795 (versus 1947 net income of $200,647—and 1946 net income of $165,872).

It would seem to follow that the certificate business is by no means unprofitable *per se*. I.S.A.'s profit showing is especially significant in view of the fact that it does not include any benefits from the selling end of the business, which (as will be explained below) is handled by I.S. on a highly profitable basis—and is after deduction of sizeable mortgage premium, investment management and other fees to I.S. The parent company purchases mortgages for I.S.A. and charges the latter a premium of 1½% on the amount. For servicing such mortgages (including collections of amortizing payments, following up of delinquencies, etc.) the parent company gets a fee equal to ½% per annum on the total amount serviced. Also, for managing [fol. 2589] I.S.A.'s investment portfolio the parent company gets a management fee equal to ½% per annum of the average book value of the subsidiary's security holdings.

Other Subsidiaries

The essential profitability of business in Saving Certificates, Investment Certificates and Participation Certificates is further indicated by the operations of two other I.S. subsidiaries: Investors Syndicate of Canada Limited (99-9/10%) owned by I.S.) and Investors Syndicate Title and Guarantee Company (96.1% owned by I.S.). The Canadian subsidiary has outstanding some $100 million face amount of certificates. Investors Syndicate Title and Guarantee

Co., which operates exclusively in the State of New York, has outstanding roughly $10 million face amount of certificates, in both instances the operations are profitable. The Canadian company had a net profit of $141,697 for 1948 after all charges, against a net profit of $132,304 for 1947. The New York company had net income of $110,470 in 1948, versus $97,534 in 1947.

Practically all of the above profits are attributable to business in installment certificates.

II. *The Open-End Investment Funds*

To make further use of its large and experienced selling force, and to provide a medium in which holders of Savings Certificates could be interested upon maturity of their certificates, I.S. in 1940 organized an open-end investment company known as Investors Mutual, Inc. Subsequently I.S. organized two other open-end investment companies: Investors Selective Fund, Inc., and Investors Stock Fund, Inc. Under annual contract, I.S. acts as the sole distributor of their shares and manages their investment portfolios. As the distributor of shares, I.S. receives the sell-[fol. 2590] ing or "loading" charge, maximum 7½% of the offering price of the shares (6% in the case of Investors Selective Fund, Inc., shares) and for its management fee ⅛ of 1% quarterly of the value of the net assets of each of the open-end investment companies or funds.

This entry into the open-end investment company field has been highly successful. As of March 15, 1949, total assets of the three funds approximated $146 million—of which roughly $139 million were accounted for by Investors Mutual, Inc., which has become the largest "balanced fund" in the entire open-end investment company field.

While I.S. does not have stock control of any of the three affiliated open-end investment companies, it dominates all of them through the instrumentality of common officers and interlocking directorates.

III. *Breakdown of I.S.'s Income Account*

As shown in the report prepared for us by Saunders, Stiver & Co., under date of March 15, 1949 the net results of the enterprise as a whole over a period of years have been none too satisfactory. However, the final figures cannot be understood properly unless we recognize what lies behind them. Examination reveals that, although I.S. has been losing money on its own certificate business, its sales department and various other activities have been quite profitable. Let us consider last year's income breakdown, which was typical. The company had 1948 gross income of somewhat more than $21,870,000. It was derived from the following sources;

[fol. 2591]

Investment Income (interest and dividends)		$11,239,866
Income from Servicing I.S. Certificates		665,005
Miscellaneous Mortgage Income		935,421
Underwriting (selling) Fees from Subs. & Affiliates		
From I.S.A.	$4,613,783	
From Funds	2,423,019	7,036,802
Management Fees		
From I.S.A.	107,098	
From I.S.C.	47,351	
From I.S.T.&G.	15,000	
From Funds	665,975	835,424
Mtg. Premium, Servicing & Collect. Fees		
From I.S.A.	912,633	
From I.S.T.&G.	153,851	7,066,484
All Other Income		94,049

From the above table it will be noted that I.S.'s total income from its investment portfolio was $11,239,866. This was $1,257,527 less than the cost of certificate money to the company (which was $12,497,393). In other words, I.S. had an out-of-pocket loss of $1,257,527 on its certificate investment account. Since there was direct investment expense of $43,488 the account showed a red-ink figure of $1,301,015—before allocation of any general overhead expense.

Every other phase of I.S.'s business produced a profit after deduction of expenses other than general overhead as follows:

Selling Activities (net)*	$1,802,798
Certificate Servicing (net)†	559,104
Mortgage Operations (net)‡	176,131
Management Fees	835,424
Miscellaneous (net)	27,567
Total	$3,401,024
Subtract	
Loss on Investment Acc't.	1,301,015
Remaining Profit before Gen. Overhead	$2,100,009
General Overhead Expenses**	2,484,606
Net Loss on I.S. Operations	$ 384,597
Share of Subsidiaries' Earnings††	768,952
CONSOLIDATED NET INCOME††	$ 374,355

* Underwriting fees from subsidiaries and affiliates less commissions paid to salesmen and other direct underwriting expense.

[fol. 2592]

† Collection and allied revenue from servicing I.S. Certificates less direct certificate servicing cost.

‡ Premium and other income, including service fees from subsidiaries and affiliates, less commissions paid and other direct expense.

** Apportioned $542,128 to the Sales Department, and $1,942,478 to the combined activities associated with Investments, Management, Mortgage Operations, and certificate servicing.

†† This is after giving effect to a $127,989 I.S.A. loss on sale of securities.

The foregoing table shows that if I.S.'s income on its investment expense or general overhead) the $384,597 net money (without providing anything towards either direct investment expense or general overhead) the $784,597 net loss on I.S. operations would have been transformed into taxable earnings of $872,930:

IV. *Prospects of Development*

While I.S. achieved a huge distribution of its Savings Certificates in the years 1894-1940, it did no more than scratch the surface of the demand; this is evident from the fact that the face amount of I.S. certificates outstanding is already outstripped by the outstanding face amount of I.S.A. certificates, which have been distributed only since 1941. The showing of I.S.A., moreover, proves the certificates can be distributed on the basis of a distinctly low basic interest rate in relation to the general level of interest rates prevailing at the time of distribution. Indeed the interest rates called for by I.S.A. (and also (I.T. &G.) certificates are so low as to make it seem remarkable that they can be sold in competition with U.S. Government bonds, life insurance, etc. But they are sold, and in extraordinary quantity: Last year alone I.S.A., I.S.C. and I.T.&G. together distributed more than $200 million face amount of certificates—of which some $167,700,000 were [fol. 2593] I.S.A. The secret of the popularity of such certificates is that they represent a plan of forced saving, which has great appeal to many people, particularly in rural areas and smaller cities. It is interesting to note that, although I.S.A. installment certificates are available in 11 different series, maturing variously in from 6 to 20 years, nearly 90% of the aggregate face amount sold last year

were in the two longest-maturity series (15 years and 20 years).

Future of the "Funds"

Investors Mutual, Inc., was organized early in 1940. The story of its amazing and consistent growth is told in the following table, reproduced from the annual report of Investors Mutual, Inc. for the latest fiscal year, ended September 30, 1948:

Investors Mutual, Inc.

Fiscal Year Ended	Total Assets	Shares Outstanding at Year End	Price Per Share (3) Redemption Price	Price Per Share (3) Offering Price	Dividends Declared Per Share (4) Source of Dividend: Total Per Share	Net Int. and Div. Inc.	Net Realized Gains on Investments
(1) 12-31-40	$ 285,142.56	29,884	$ 9.415341	$10.078700	$0.40	$0.32	$0.08
12-31-41	4,063,845.97	473,881	8.505918	9.118282	.61½	.51½	.10
12-31-42	12,612,630.01	1,447,436	8.629535	9.265684	.51	.45½	.05½
12-31-43	25,873,416.25	2,534,238	10.129432	10.947360	.85	.43	.42
12-31-44	45,976,656.19	4,007,168	11.402067	12.290175	.80	.43	.37
(2) 9-30-45	67,694,938.49	5,327,968	12,568409	13.44	.56	.29	.27
9-30-46	86,901,502.54	7,002,132	12,385132	13.24	1.04	.44	.60
9-30-47	107,571,095.80	8,809,135	12.048855	13.02	.63	.48	.15
9-30-48	121,256,868.81	10,657,765	11.370884	12.29	.70	.51½	.18½
				TOTAL.....	$6.10½	$3.87½	$2.23

(1) Shares were first sold to the public in April of 1940.
(2) Nine month period. During 1945 fiscal year was changed from December 31 to September 30.
(3) Prices as of fiscal year-end and are ex-divided. Beginning in 1945, offering price was adjusted to the nearer cent.
(4) Prior to 1946, a portion of the dividends known as "Equalization Account" represented a return of capital to those shareholders who purchased their shares during but not prior to the then current year.

[fol. 2595] Neither Investors Stock Fund, Inc., nor Investors Selective Fund, Inc. has been in existence long enough to offer any record of long-term performance. Both are small by comparison with Investors Mutual. However, the following record of Investors Stock Fund reproduced from its annual report for the fiscal year ended October 31, 1948, shows characteristic growth:

Investors Stock Fund, Inc.

Fiscal Year Ended 10-31	Total Assets	Shares Otstg. at Year End	Redemption Price Per Share[2]	Offering Price Per Share[2]	Dividends Declared Per Share		
						Source of Dividend	
					Total Per Share	Net Int. and Div. Inc.	Net Realized Gains on Inv.
[1]1945	$2,341,264	188,325	$11.973030	$12.81[3]	$0.10	$0.09	$0.01
1946	7,590,283	647,383	11.720517	12.54	.52½	.29	.23½
1947	8,706,212	696,416	12.455010	13.46	.53	.48	.05
1948	9,981,671	770,752	12.248244	13.89	.62	.59	.03
				Total	$1.77½	$1.45	$0.32½

[1] Shares were first sold to the public in June of 1945.

[2] Prices as of fiscal year-end and are ex-dividend.

[3] A portion of the October 1945 dividend was distributed from an "equalization account," and such portion represented a return of capital to those shareholders who received the October 1945 dividend.

At the end of the 1948 calendar year the three "Funds" had combined assets of nearly $140 million (of which some $128 million was represented by Investors Mutual) and their shares were held by a total of about 75,000 individuals or organizations located in all parts of the United States. By March 15, 1949, the total assets of the three "Funds" had gone up to roughly $146 million (of which $139 million was represented by Investors Mutual).

Thus the "Funds" continue to grow. Investors Mutual is recognized as the fastest-growing important open-end [fol. 2597] investment fund in the United States today.

Continued growth is indicated for the future. Public acceptance of open-end investment company shares was never

greater that it is today and this field promises to become of increasing importance in our whole economic development.

There is plenty of competition in the field and the competition may increase. However, the "Funds" sponsored by Investors Syndicate have the advantage of distribution by a trained selling force built up over years of successful activity and consisting of more than 1,700 salesmen operating from some 120 offices located in 43 of the 48 states. Furthermore, they have the incomparable advantage of peculiar access to large investable sums made available regularly through maturities of Savings Certificates.

It is worth pointing out that, up to the present time at any rate, the sales of open-end investment fund shares have been good even when general business conditions were adverse. Holders of such shares generally seem to regard them as their soundest security possessions. It is significant that in the period from January 1, 1949 through March 15, 1949, when neither general business conditions nor the security markets were propitious, shares of the I.S.-sponsored open-end investment funds were sold in the amount of $6,622,000, a figure 33% larger than in the corresponding year-earlier period!

Other Activities

Of late I.S. has begun to develop new uses for its salesmen (who are being equipped to sell life insurance effectively) and additional sources of income—such as acquisition of general mortgage brokerage, short-term loans to building contractors, industrial loans, etc.

[fol. 2599]

V. *Projection of Earnings*

The figures in the I.S. ten-year earnings projection cited in the Saunders, Stiver report appear to have been reproduced partly from memory but they are substantially in accord with those of the official projection as presented to the SEC. Here are the correct figures:

Ten-Year Projection of Consolidated Earnings*

Investors Syndicate, Inc.

	Management Prof. (net)†	Under writing Prof. (net)†	I.S. Net Income‡	Subsidiary Net Income‡	Consolidated Net Income‡
1947	$ 624,500	$1,011,700	d$ 387,675	$ 228,200	d$ 159,475
1948	702,250	1,083,800	249,825	322,700	572,525
1949	787,250	1,275,900	513,995	443,400	957,395
1950	903,250	1,399,300	759,010	587,200	1,346,210
1951	1,023,550	1,419,000	623,550	754,000	1,577,550
1952	1,045,200	1,459,000	1,123,350	886,000	2,009,350
1953	1,273,000	1,445,000	1,663,450	1,022,000	2,685,450
1954	1,387,150	1,401,000	2,196,050	1,165,000	3,361,050
1955	1,498,150	1,385,000	1,815,350	1,320,000	3,135,350
1956	1,605,850	1,343,000	3,615,850	1,475,000	5,090,850

* In condensed form.

† After deduction of all pertinent expense, including allocated proportion of general overhead.

‡ Before profit or loss on sale of securities and before Federal income taxes.

The foregoing table assumes no improvement in the return on investment and no significant change in underwriting fees. The steady improvement projected for the net results of I.S. itself reflects two things: (1) an indicated steady increase in management fees, due to the enlarged investment accounts of subsidiaries and affiliates; (2) the indicated reduction and ultimate elimination of out-of-pocket losses on the I.S. certificate-investment account, due to gradual decrease in the outstanding amount of I.S. 5½% and 5% certificates, and then of I.S. 4½% and 4% certificates. The increases projected for the earnings of subsidiaries reflect: (1) the indicated enlargement of their [fol. 2600] investment portfolios; (2) the satisfactory investment return obtainable in relation to the low cost of their certificate money; (3) their previous rate of earnings growth.

The projection was not borne out by actual 1948 results with respect to the parent company's operations but it was more than borne out by the earnings of subsidiaries, and the final consolidated showing was rather close to the mark.

There is every reason to believe that the consolidated earnings will improve progressively.

Under capable management, they should eventually go far above the projection's consolidated figure for 1956.

VI. *Financial Considerations*

I.S. had outstanding at the 1948 year-end certificates totaling $476,113,150 in face amount. But these certificates are scheduled to mature over a period of years (the schedule of maturities is shown on page 4 of the Saunders, Stiver & Co. report), and regular installment payments are being received on them. The full measure of the company's possible liability on its certificates at any one time is their aggregate cash surrender value.

As of December 31, 1948, the aggregate cash surrender value of outstanding I.S. certificates was less than $230 million. The company's remaining liabilities other than certificate reserves were barely $1,300,000. As against these combined liabilities, the company showed cash, marketable securities and mortgages of more than $263 million (see breakdown in initial section of this analysis). The coverage seems ample, even when allowances are made for the fact that it includes security holdings carried at over $54,200,000 or almost $4,350,000 more than their year-end market value.

Of the more than $200 million in mortgages, some $96 [fol. 2601] million were FHA-insured, and some $30 million more were guaranteed fully or partially by the Veterans Administration. The uninsured and unguaranteed mortgages were for the most part in small loans; there were only 13 separate loans in excess of $500,000 and the aggregate of such loans was less than $8,565,000. (At the end of February, 1949, more than 99% of all the mortgages held by the company were up-to-date with respect to amortization and other payments; with more than $200 million of mortgages, delinquencies totaled barely $1,800,000.)

In arriving at the above figure of "total cash surrender value" of outstanding certificates as of December 31, 1948, I have eliminated roughly $9,100,000, against which there were loans to certificate holders outstanding in that amount. These loans are secured 100% by the cash surrender value of the related certificates.

Total assets of the company as of December 31, 1948, were carried at $283,631,152. "Total cash and investments" (including certificate loans, small industrial loans, etc., made up more than $275,000,000 of this). In the roughly $8,540,000 remainder, there were only two important items: (1) notes and accounts receivable of about $3,428,000; (2) Investment in Capital Stock of Subsidiaries, $4,434,000. The receivables were owing largely from subsidiaries in current accounts, unquestionably worth their full face value. The figure representing Investment in Capital Stock of Subsidiaries just matched the aggregate book value (capital stock and surplus) applicable from those subsidiaries, as shown on their books. In the case of one of the subsidiaries, I.S.A., the market value of security holdings was $2,107,000 less than book value.

It is not to be assumed that the I.S. balance sheet position is what we would like it to be, since there is a capital deficit of some $3,500,000 on the basis of market values. [fol. 2602] However, this is after certificate reserves which while somewhat smaller than they would be on the "Current Accrual" basis sponsored by the SEC (toward which the company is working), are certainly adequate for all practical purposes. I.S. continues to receive regular installment payments on its unmatured certificates and, as shown by the "Cash Flow" table on page 5 of the Saunders, Stiver & Co. report, the indicated cash receipts for the period from 1948-1957 are some $26 million in excess of the indicated cash disbursements. By 1957 the face amount of I.S. certificates outstanding will be so greatly reduced as to make maturing certificates easily covered by the indicated available assets.

The balance sheets of its subsidiaries all are stronger than that of I.S. itself. All show actual equities for the respective capital stocks and all have their certificate reserves on a "current accrual" basis.

VII. *Conclusions*

The following conclusions seem justified by the foregoing analysis:

(1) The combined business represented by I.S. and its subsidiary and affiliated interests is on the whole, uniquely well conceived and solidly established;

(2) It is a "safe" business, involving considerably less than the usual risk of financial misfortune;

(3) It is a growth business;

(4) It is a business which promises eventual rich profit rewards.

The terms under which we have been offered 85,660 shares of I.S. common (voting) stock are definitely attractive. It should be remembered that the terms do not call for [fol. 2603] an investment of $2,600,000 by us at the present time. (We could get the stock for a much smaller figure on the basis of a lump-sum payment.) The $2,600,000 figure is a conditional one, *depending on actual future earnings.* The down payment called for is only $1,300,000. If sufficient earnings are available to call for payment of an additional $1,300,000, such additional payment will have been amply justified. That the available earnings will be more than sufficient for this I have no doubt.

Charles Shipman

April 7, 1949

[fol. 2604]

Schedule of Sales Department Results

The $7,036,802 underwriting fees were subject to deduction as follows:

Commissions Paid to Salesmen	$4,371,395
Other Direct Selling Expense	862,609
Proportion of General Overhead	542,128
Total Underwriting Expense	$5,776,132

Thus I.S. had a net profit of $1,260,670 on its selling activities after all expenses, including a proportionate allocation of general overhead. Before deduction of the allocated proportion of general overhead, the profit from the sales department was $1,802,798.

[fol. 2605]

Capitalization of Investors Syndicate, Inc.

Funded Debt

None

*STOCK

	Auth. Shares	*Outstg. Shares*
Class A Stock ($5 par)	260,000	175,836
Common ($5 par)	140,000	114,908
Total Shares	400,000	290,744

* Common stock has one vote per share. Class A stock is non-voting but is identical with the Common in all other respects.

Consolidated Earnings Record

1937-1947

	Total Income	*Net Income*
1947—	$19,809,000	d$248,000*
1946—	18,941,108	45,986
1945—	15,602,790	205,835
1944—	13,111,399	48,401
1943—	13,322,040	426,265
1942—	13,166,181	d 230,894
1941—	$13,264,564	$ 42,610
1940—	14,568,313	350,622
1939—	14,262,407	751,055
1938—	12,397,248	780,964
1937—	10,298,611	498,483

* Before deduction of $552,000 Reserve for "possible future loss" on marketable securities.

[fol. 2606]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-295

INVESTORS DIVERSIFIED SERVICES IN MID-1949

Earnings, Operations, Reserve Requirements and the Investment Program

This discussion relates to the financial affairs of Investors Diversified Services, Inc. It is based upon current and other figures made available to us since we acquired control of IDS, and upon my observations and conversations with IDS top personnel, including Messrs. Crabb, Twohy, Van Meter, Ryan, Ridgway, Hatch, Green, Robinson, Waag and Racey. It takes special note of the "Tentative Investment Program" drawn up by Mr. Van Meter under date of July 26, 1949.

There are some decidedly disconcerting elements in the financial picture as it shapes up today. They are serious and unmistakable. There are also reassuring elements. If we adopt proper policies and see that they are carried out our investment promises to be quite safe and indeed should ultimately prove even more profitable than seemed indicated when our Board decided to acquire control.

The policy question is many-sided, involving administration, personnel, etc. The discussion which follows will touch on such matters only to the extent called for by the financial presentation.

I

CURRENT EARNINGS

Although net results for the first half of 1949 make pleasant reading, the underlying figures are disturbing. IDS (the parent company) was in the black to the tune of $336,000, whereas in the first half of 1948 it was in the red by $286,000 (a year-to-year improvement of $622,000)—and profits of subsidiaries increased to $522,000 from the year-earlier $365,000. But improvement in the parent

company's showing was due exclusively to extraordinary business in Construction Loans. Without that extraordinary business IDS itself would have been even deeper in the red than the year before.

Consider the following, reproduced from the Van Meter document referred to above:

EARNINGS BEFORE CAPITAL GAINS AND LOSSES AND PROVISIONS FOR TAXES ON INCOME
(000 omitted)

	First 6 mos. 1948	First 6 mos. 1949	+	—
Application of Investment Income to Cost of Certificate Money—Balance*	$ -639	$ -774	$	$135
Management Fees	412	464	52	
Underwriting Income	582	663	81	
Certificate Servicing Income	251	234		17
Surrender Income	67	91	24	
Private Placement		97	97	
Miscellaneous Income Less Miscellaneous Expense	- 88	- 42	46	
Mortgage Operations:				
Construction Loan Fees	159	1,102	943	
FNMA Expense		-265		265
Other Income and Expense, Net	- 97	-110		26
General and Administrative Expense	-933	-1,124		191
Total	-286	336	622	
Earnings of Subsidiaries	365	552	187	
Total	79	888	809	

* Equals money cost less investment income.

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[fol. 2608]

It will be noted that the application of investment income to certificate money cost showed an adverse balance of $774,000, which was $135,000 more than the adverse balance for the first half of 1948.

Apart from Mortgage Operations the only important contributions to income were Management Fees, Underwriting Income and Certificate Servicing Income. Both Management Fees and Underwriting Income were higher than in the corresponding 1948 period. Certificate Servicing Income was down slightly. However, Underwriting Income, the largest item of the three, is unlikely to hold its year-to-year gain. Van Meter estimates that underwriting income will be off $33,000 for 1949 as a whole. He may be too pessimistic but the recent trend of sales as reflected in the Weekly Sales Summary scarcely warrants confidence that there will not be a year-to-year drop in Underwriting Income for the final half of 1949.

Operating expenses, including general overhead, are disproportionately heavy and have continued to increase.

The situation calls for a resolute attack upon the excessive burden. The organization needs tightening up. Wasteful procedures need to be corrected and unnecessary personnel to be eliminated. Meantime, there should be exploration into the feasibility of adding to Management Fees (perhaps by building up a general investment supervision business) and Underwriting Income (by giving the salesmen something new to sell, etc.). Even if it be granted that the present dip in sales of certificates is temporary, we should not ignore the principle that it is a mistake "to ride a single idea forever," no matter how fruitful that idea may have proved to be.

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II

Construction Loans and Other Activities of Mortgage Department

With due allowance for the expenses associated with this phase of the business (including "FNMA Expense"), the profit on Construction Loans has been remarkably good. It will be remarkably good for 1949 as a whole. Moreover, there will be even larger—considerably larger—profits from this source in 1950 (partly because a substantial portion of the profit to be realized this year is not expected to be taken into income account until 1950).

However, the profits I have been talking about are windfall profits. They should not be regarded concomitant of normal Mortgage Operations.

Everyone I have spoken to in the IDS organization expects the Construction Loan business to dry up within the next eighteen months or so. Then, unless an important substitute is found, the Mortgage Department will have comparatively little to do and will have to be shrunk drastically to prevent big losses on account of the heavy expense factor. Van Meter suggests that there might be a partial substitute in the form of participation in Title I loans to home owners for modernization and repairs. Don Ryan agrees that such loans would be swell but is not sure the paper is eligible under IDS deposit and asset maintenance requirements. I presume the matter is being studied by counsel. A determination should not take long.

Considering all of the expenses allocated to the Mortgage Department, including Home Office or General and Administrative Expense, the Mortgage Department normally operates in the red (before interest on IDS mortgage holdings). The loss from Mortgage Operations for the calendar year 1948, after allocated Home Office expense, approximated $700,000.

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III

Yields on Investment

Whereas the cost of certificate money for 1948 was 4.452%, the *Gross Rate of Earnings* on Invested Assets was only 4.039%. On investment in securities, the gross rate of return was 3.564%, on mortgages it was 4.374%.

The indicated rate of return on security holdings as of June 30, 1949 was 3.716%. The yield on securities can be improved by judicious switches but there are serious limits to what can be done along this line under existing circumstances (including the types of securities that must be carried, the status of the surplus account and the asset maintenance requirements). A variety of switches has been authorized recently, but for the most part the switching was undertaken to get out of basically weak situations rather than to improve yield. Authorization has also been given recently for sales of some $2.5 million market value of low-yielding securities which could be sold at a profit or around a break-even basis, proceeds to go into mortgages. The subsequent rise in market values probably will permit the taking of additional profits.

It has been suggested that all the funds realized from sales of securities should be put into mortgages. But that would not improve the return so much as might be supposed. Gross rate of return is one thing. Effective return is another. Comparison of the effective yields achieved in 1948 from IDS security holdings on the one hand and from the mortgage portfolio on the other is afforded by the following tabulation, taken from the IDS

accounting department's Analysis of Net Operating Income for 1948:

Investment Income				
Interest on Mortgage Loans		$ 8,628,022	Interest & Dividends on Securities	$ 2,069,052
Less Expenses:			Less Home Office Expense	79,972
Mortgage Operations —net (per Accompanying Statement)	$	114,260*		
Net Real Estate Expense		3,945		
Miscellaneous Mortgage Expense		3,339		
Home Office Expense		670,179		
Total	$	563,203		
Net Income	$	8,064,819		$ 1,989,080
Average Investment		$197,045,680		$58,062,032
Net Rate of Return		4.093%		3.426%

* Red Figures

The advantage of Yield is still seen to be with the mortgage portfolio. However, it must be borne in mind the tabulation deals with rates of return upon entire portfolios and that the mortgage portfolio includes a substantial volume of old mortgages bearing interest at 5% and higher. Such interest rates are not obtainable now. The field is restricted to mortgages of 4½% and 4% (gross). I am still somewhat unclear as to just what volume of 4½% mortgages is now available to us and whether we are not now buying some 4s. The effective yield on a 4% mortgage, after allowing for the cost of

creating the mortgage and for servicing costs, etc. is probably very little greater than average net return on our security portfolio.

Higher yields are definitely obtainable in the securities field through private placements. I believe the field is a fertile one and that our efforts in this field should not be abandoned lightly, not only because of the yield consideration but for other reasons as well. But we cannot afford to "go overboard" on private placements; we should continue to feel our way carefully.

The chance of narrowing the gap between investment income and the cost of certificate money is, therefore, not bright—particularly in view of the fact that the proportionate cost of certificate money will tend to rise as the outstanding certificates get closer and closer to their respective maturities.

IV

The Favorable Side of The Earnings Picture

Notwithstanding all the disconcerting circumstances discussed above, the earnings picture is far from gloomy. While Van Meter expects IDS itself to be in the red for the final half of 1949 (and I believe Crabb does also), IDS will be in the black for 1949 as a whole—and consolidated earnings for the year promise to run somewhere in the neighborhood of $1,200,000 to $1,500,000, as compared with consolidated earnings of less than $400,000 in 1948. Thanks to prospective income account deferment of much of the Construction Loan profits to be realized this year, 1950 earnings of IDS seem certain to be up a good deal. Moreover, on the basis of Construction Loan business lasting through the greater part of 1950, there should be

a substantial carryover of the extraordinary profits into 1951.

Looking further ahead, there is a distinctly favorable factor to reckon upon. As the amount of outstanding IDS certificates is reduced, the dollar amount of the adverse balance in investment account (cost of certificate money less income on investments) will decrease. It will decrease substantially year by year beginning with 1951. This means that there will be a progressively smaller drain upon the profits from Management and Sales activities. The effect upon net results will be dynamic. Management profits seem certain to continue growing. Profits from selling activities are bound to be large regardless of sales trends.

V

Earnings Prospect Versus Reserve Requirements

Under the circumstances, there is no justification for pessimism regarding the company's ability to earn enough for the required annual appropriations to certificate reserves. In the light of all circumstances, last year's earnings were certainly very moderate by comparison with the reasonable expectation for the future. However, last year's consolidated net income "available for improving installment certificate reserves" was equal to 4.916% of the existing "mean installment certificate reserves." According to the latest actual study by Joseph Froggatt & Company, Inc., dated April 29, 1949, "an earnings rate of 4.864% would be required on the dollar amount of reserves maintained by the company at December 31, 1948, to meet its maturities and other contract requirements."

Even with a consolidated earnings experience no better than that of 1948, IDS evidently would be able to meet future requirements.

VI

Problem of Book Value Realization

The practical ability of the company to realize on its reserves will depend on the extent to which the reserves are worth book value. The Summary of Securities Owned as of July 31, 1949 showed the following relationships between book value and market value for IDS and ISA:

	IDS	ISA
Book Value of Security Holdings	$59,315,034	$30,987,057
Market Value of Securities Owned	55,324,808	29,050,546
Discrepancy	$ 3,990,226	$ 1,936,511

The foregoing undoubtedly represents an understatement of the impairment from book values inasmuch as the market values of certain securities for which no quotations are available have been assumed to be identical with their book values.

The impairment may be made up altogether eventually; on the other hand, it may conceivably be aggravated. Careful supervision of security holdings is necessary, with some risk-taking. Incidentally, it goes without saying that market depreciation cannot be made up by switching to private placements and/or mortgages.

Nor can we afford to ignore the question of liquidity in our investments. *We must have as much liquidity as is necessary for safety in handling future contractual requirements and as is consistent with earnings and capital appreciation needs.*

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VII

Projection of Money Flow

Beginning with 1951 IDS has heavy certificate maturities to meet and these maturities will be particularly heavy in 1953, 1954 and 1955—which Van Meter calls "the critical years." In this connection, it is pertinent to consider the accounting department's estimates of future cash flow. As observed by Van Meter those estimates indicate asset growth of $6.4 millions for the last half of this year and $2.48 millions for the next year, a total of $8.88 millions. He goes on to remark that this new cash together with previously existing assets are available "to meet the conditions of the liquidation which starts in 1951."

Following is a presentation of the accounting department's estimates of cash receipts and disbursements by years for 1950-1959 inclusive, as summarized by Van Meter:

	Contractual			Other		
Year	Receipts	Disbursements	Contractual Deficit	Receipts	Disbursements	Total Deficit
1950	$32,203	$28,796	$+3,407	$22,949	$23,420	$+2,481
1951	30,854	42,483	11,529	23,168	22,888	11,349
1952	26,514	47,996	21,482	23,544	21,491	19,429
1953*	21,497	63,292	41,795	23,341	19,434	37,888
1954*	18,169	56,795	38,626	22,287	17,446	33,785
1955*	13,937	56,696	42,759	21,123	15,461	37,097
1956	17,025	33,910	16,885	20,007	13,921	10,799
1957	14,396	20,772	6,376	19,140	12,974	210
1958	12,418	14,530	2,112	18,478	12,354	+4,012
1959	9,690	10,805	1,115	17,875	12,050	+4,710

* The critical years.

[fol. 2616]

It will be noted that the net deficiency of indicated receipts for the period of 1950-1957 inclusive is roughly $147,000,000. However, a table on the first page of Van Meter's study showed $68,768,000 in the Revolving Fund, an additional $32,092,000 in FHA Mortgages, $13,250,000 in GI Mortgages, and $7,039,000 in U. S. Government bonds and Municipals. That makes a total of about $121,000,000 of investments in this country which may be considered reasonably liquid. Application of these assets would reduce the discrepancy to $26 million. Further, IDS holds some $7 million of bonds of the Dominion of Canada and its provinces and municipalities, which bonds would be available for ready sale in meeting maturities and other contractual requirements of IDS certificates held in Canada—cutting the over-all discrepancy to $19 million. A $19 million discrepancy would not seem to be too formidable in view of the company's substantial holdings of less liquid investments. IDS is permitted to sell conventional mortgages to ISA. Moreover, in a pinch IDS could take down dividends from its subsidiaries—although this would require a declaration of "extra credits" to certificate holders. I have made no mention of the $7,500,000 cash held by IDS, although the company doubtless could get along on somewhat less than that amount of cash if necessary.

The foregoing computation of "available" assets is admittedly not in line with the most conservative practice. There is no auction market for mortgages and it might be difficult to cash in on even FHA-insured mortgages in large volume without considerable delay—particularly in a "foreclosure period." *The liquidity of the IDS portfolio is far from ideal. We cannot afford to be smug about it. On the other hand, calamity howling is hardly in order.*

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VIII

Summary of Recommendations on IDS Investment Policy

(1) Make every effort to maintain at least the present degree of liquidity in the investment account. (The revolving portion of the so-called Revolving Fund should be kept in being even after the Construction Loan business peters out. The eligibility of Modernization Loans should be determined immediately. Also, Van Meter's idea of going into the rediscounting of automobile paper seems well worth examination. This business would not replace windfall earnings but would apparently fulfill the function of keeping funds active.)

(2) Refrain from over-doing the liquidity emphasis. Greater liquidity should be an ultimate objective but should not be striven for too fast, at the expense of other at present equally important investment objectives. The primary IDS investment problem today is to recover lost market value and to improve yield. (Of course switching ought to be carried out in such a way as to improve quality to some extent.) Later, when profits from non-investment sources are proportionately much larger in the total income picture, we can afford to make sacrifices of yield in the interest of liquidity. Meanwhile, we should follow the course outlined in my July 9, 1949 memorandum to Messrs. Young and Purcell (which we have already begun to do), to:

> -a- Get out of all preferred stocks and longer-term bonds while we can do so at a profit or without important loss of principal or yield.

-b- Take losses (as surplus account and asset maintenance requirements permit) in other situations which seem certain to go from bad to worse.

-c- Put proceeds from profit-taking and break-even sales into mortgages and private placements.

-d- Put proceeds from the sale of weakened preferred stocks and bonds into securities obtainable on about an equally high current yield basis but being better situated from the standpoint of future prospects.

-e- As market conditions permit, carry the liquidation of preferred stocks and long-term bonds further. (Incidentally, I cannot agree with Van Meter's evident notion that long-term bonds Ba rating are intrinsically desirable for IDS. He says in his study, on page 12: "The position should include highly liquid securities, Ba rating or higher, and may be of long term." Even a medium-term bond of Ba rating—or Baa rating for that matter—is rarely to be classified as "highly liquid," much less a long-term issue.)

-f- Push efforts for the right to sell securities to ISA.

IX

Summary of Other Recommendations

(1) Explore the feasibility of adding to Management Fees by taking on some general investment advisory business: supervision of large private accounts, etc. (It goes without saying that this should not be done until the full integration of the personnel of Hatch's department in accordance with the program now under way.)

(2) Explore the possibility of boosting Underwriting Income by giving the salesmen something new to sell (perhaps a real *Growth Stock* Fund, perhaps a closed-end investment trust, perhaps something else) and in other ways (possibly through an arrangement with Bache & Company or some other brokerage house).

(3) Improve over-all operating efficiency. Take steps calculated to give leadership and cut expenses.

(4) Build up the earnings of ISA—within the elbow room permitted by ISA's surplus account and asset maintenance requirements.

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[fol. 2619]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-306

ARTICLES OF RESTATEMENT

OF

CHARTER

OF

ALLEGHANY CORPORATION

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19[illegible]
[fol. 2620]

ALLEGHANY CORPORATION

ARTICLES OF RESTATEMENT OF CHARTER
(Under Section 13)

ALLEGHANY CORPORATION, a Maryland corporation, having its principal office in the City of Baltimore, Maryland (hereinafter called the Corporation), hereby certifies to the State Tax Commission of Maryland, that:

ARTICLE 1: The Corporation desires to restate its Charter as now in effect.

ARTICLE 2: The provisions of the Charter which are now in effect, stated in accordance with the provisions of Sec. 13, Art. 23, Ann. Code of Maryland (1951, Ch. 135), are as follows:

"FIRST: That we, the subscribers, HUNTINGTON CAIRNS, JOHN W. AVIRETT, 2d., and H. H. WALKER LEWIS, the post-office address of all of whom is 605 Calvert Building, No. 101 East Fayette Street, Baltimore, Maryland, all being of full legal age, do, under and by virtue of the general laws of the State of Maryland authorizing the formation of corporations, associate ourselves with the intention of forming a corporation.

"SECOND: The name of the corporation (which is hereafter called the Corporation) is

ALLEGHANY CORPORATION

"THIRD: The purposes for which and for any of which the Corporation is formed and the business and objects to be carried on and promoted by it are as follows:

"(1) To acquire by purchase, subscription, or otherwise, and to own, hold for investment, to use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of, shares of stock, bonds, debentures, notes, scrip, securities, evidences of indebtedness, contracts, or obligations, of any corporation or corporations, association or associations, domestic or foreign, or any firm or individual, or of the United States or any state, territory or dependency of the United States, or of any foreign government or governmental subdivision, and also to issue in exchange therefor stocks, bonds, or other securities, or evidences of indebtedness of the Corporation, and while the owner or holder of any such property to receive, collect and dispose of, the interest, dividends, and income, on or from such property, and to possess and exercise, in respect thereof, all of the rights, powers and privileges of ownership, including all voting powers thereon; to loan its moneys; and to acquire, own, hold, lease, sell and mortgage such real estate and other personal property as may be necessary or incident to carry out the purposes aforesaid.

"To aid in any manner any corporation or association, domestic or foreign, or any firm or individual, any shares of stock in which, or any bonds, debentures, notes, securities, evidences of indebtedness, contracts, or obligations of which, are held by or for the Corporation, directly or indirectly, or in which or in the welfare of which the Corporation shall have any interest, and to aid or participate in the reorganization, consolidation or merger of any corporation in which or in the welfare of which the Corporation shall have any interest.

"(2) To enter into, assist, promote, conduct, perform or participate in, every kind of commercial, mercantile, mining, or industrial enterprise, business, or work, contract, undertaking, venture, or operation, in the United States or in any foreign country; and for any such purpose to purchase or otherwise acquire, take over, hold, sell, liquidate, or otherwise dispose of, the real estate, plants, equipment, inventory, merchan-

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disc, materials, and other assets, stock, good-will, rights, franchises, patents, trade marks and trade names, and other properties of domestic or foreign corporations, firms, associations, syndicates, individuals and others; to continue, alter, extend or develop their business, assume their liabilities, guarantee or become surety for the performance of their obligations, reorganise their capital and participate in any way in their affairs; to take over as a going concern and continue, in its own name, any business so acquired, and to pay for any such business or properties in cash, stock, bonds, debentures, securities, or obligations of the Corporation, or otherwise.

"In furtherance and not in limitation of the general powers conferred by the laws of the State of Maryland, and of the objects and purposes hereinbefore stated, it is hereby expressly provided that the Corporation shall also have the following powers, that is to say:

"(a) To do any or all things herein set forth to the same extent and as fully as natural persons might or could do, and in any part of the United States or in any foreign country, and as principal, agent, contractor, or otherwise, and either alone or in conjunction with any other individuals, firms, associations, corporations, syndicates, or bodies politic.

"(b) To borrow or raise money without limit, and upon any terms, for any purpose of the Corporation or of any corporation, association, firm, syndicate, or individual having a business or property which the Corporation determines to finance, promote or become interested in; to issue, sell and dispose of the Corporation's bonds, debentures, notes, certificates of indebtedness and other obligations, secured or unsecured and however evidenced, upon any terms, and as security therefor to mortgage, pledge or grant any charge or impose any lien upon all or any part of the real or personal property, rights, interests or franchises of the Corporation, whether owned by it at the time or thereafter acquired.

"(c) To make, execute, endorse and accept promissory notes, bills of exchange and other negotiable instruments; and to redeem any debt or other obligation before the same shall fall due on any terms and on any advance or premium.

"(d) To guarantee the payment of dividends upon any capital stock, and by endorsement or otherwise to guarantee the payment of the principal or interest or both on any bonds, debentures, notes, scrip or other obligations or evidence of indebtedness, or the performance of any contracts or obligations, or of any other corporation or association, domestic or foreign, or of any firm, individual or syndicate in which the Corporation may have an interest, in so far and to the extent that such guaranty may be permitted by law.

"(e) To pay for any property, rights or interests acquired by the Corporation in cash or other property, rights or interests held by the Corporation, or by issuing or assigning and delivering in exchange therefor its own stock, rights or options to purchase or subscribe for its own stock or other securities, its own bonds, debentures, notes, certificates of indebtedness or other obligations, or any of them, however evidenced; to purchase, or otherwise acquire, hold, sell, pledge, transfer or otherwise dispose of, and to reissue any shares of its own capital stock (so far as may be permitted by law) and its bonds, debentures, notes or other securities or evidence of indebtedness.

"(f) To give or grant, in connection with the issue or sale of its stock or other securities, or for cash, or otherwise, options or rights to purchase or subscribe for shares of any class or classes of the Corporation, at such price or prices and during such period or periods, and under such terms and conditions as may be fixed or determined by the Board of Directors and as may be expressed or referred to in the warrants or other instruments evidencing such options or rights to purchase or subscribe. Such warrants or instruments may be transferable or otherwise and may or may not be attached to shares or other securities issued by the Corporation, and if so attached may be detached or detachable upon such terms and under such conditions as may be fixed or determined by the Board of Directors and expressed or referred to in such warrants or other instruments.

"(g) To do all and everything necessary and proper for the accomplishment of the objects herein enumerated or necessary or incidental to the protection and benefit of the Corporation, and in general to

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carry on such lawful business necessary or incidental to the attainment of the purposes of the Corporation, whether such business is similar in nature to the objects and powers hereinabove set forth, or otherwise, but nothing herein contained is to be construed as authorizing the Corporation to carry on the business of discounting bills, notes or other evidences of debt, of receiving deposits of money or foreign coins, or buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt for circulation as money, or to engage in business as a common carrier.

"(b) To conduct its business and in connection therewith to maintain one or more offices in the State of Maryland, other states, the District of Columbia, and the territories, colonies and possessions of the United States and in foreign countries.

"Nothing herein shall be deemed to limit or exclude any power, right or privilege given to the Corporation by law or construed to give the Corporation any rights, powers or privileges not permitted by the laws of the State of Maryland to corporations organized under the statutes of the State of Maryland for the purposes for which the Corporation is organized.

"The foregoing clauses shall be construed as objects, purposes and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Corporation.

"FOURTH: The post office address of the principal office of the Corporation in this State is No. 10 Light Street, Baltimore, Maryland.

"The resident agent of the Corporation is The Corporation Trust Incorporated, a Maryland corporation, whose post office address is No. 10 Light Street, Baltimore, Maryland.

"FIFTH: There are at present eight members of the Board of Directors of the Corporation, who are O. Henry Briggs, Thomas J. Deegan, Jr., Walter W. Foskett, Henry J. Gallid, Allan P. Kirby, Herman R. Nefl, Andrew Van Pelt and Robert R. Young. Such number of directors may be changed from time to time in any manner permitted by law.

"SIXTH: The total amount of the authorized capital stock is 24,895,807 shares, of which 28,367 shares are 84 Prior Preferred Convertible Stock without par value, 1,367,440 shares are 6¼ Convertible Preferred Stock of the par value of Ten Dollars each, 1,500,000 shares are Preferred Stock of the par value of One Hundred Dollars each, and 22,000,000 shares are Common Stock of the par value of One Dollar each. The following is a description of each class of stock of the Corporation, with the preferences, voting powers, restrictions and qualifications thereof.

"One Million One Hundred Ninety-Five Thousand shares of the One Million Five Hundred Thousand shares of Preferred Stock, shall be designated as Cumulative 5½% Preferred Stock Series A, which are herein referred to as Series A Preferred Stock.

"(a) The holders of the Series A Preferred Stock shall be entitled to receive when and as declared by the Board of Directors, dividends from the net earnings of the Corporation or from its surplus at the rate of five and one-half per cent. per annum, and no more, upon the par value thereof, payable quarterly on the first day of each February, May, August and November. Such dividends shall be cumulative from the quarterly dividend date next preceding the date of issue, unless the date of issue be a quarterly dividend date, in which event such dividends shall be cumulative from date of issue, and such dividends shall be paid or declared and set apart for payment in due course before any dividends shall be paid or set apart for payment upon the Common Stock, so that if for any quarterly dividend period, the dividend on the Series A Preferred Stock at the rate of 5½% per annum shall not have been paid or declared and set apart for payment in due course, the deficiency shall be fully paid or set apart for payment in due course before any dividend shall be paid or set apart for payment for the Common Stock of the Corporation. The holders of the Series A Preferred Stock shall not be entitled to receive any dividends or share in the profits beyond the five and one-half per cent. aforesaid, whether payable in cash, stock or property.

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"(b) In the event of the voluntary liquidation or dissolution of the Corporation, except as below in Article Tenth provided, the holders of the Series A Preferred Stock then outstanding shall be entitled to receive, out of the assets (whether capital or surplus) of the Corporation, before any payment shall be made to the holders of the Common Stock of the Corporation, an amount equal to 105% of the par value of their respective shares, and all dividends accumulated and unpaid thereon, whether or not earned or declared. In the event of the involuntary liquidation or dissolution of the Corporation, the holders of the Series A Preferred Stock then outstanding shall be entitled to receive out of the assets (whether capital or surplus) of the Corporation, an amount equal to the par value of their respective shares, and all dividends accumulated and unpaid thereon, whether or not earned or declared. After payment in full in either such case of said amounts to the holders of said Preferred Stock, the remaining assets of the Corporation shall be distributed to the holders of the Common Stock or other stock according to their respective rights.

"(c) The Series A Preferred Stock at the time outstanding, or from time to time any amount thereof not less than Twenty-Five Thousand shares may be redeemed, at the option of the Corporation on any of the quarterly dividend payment dates aforesaid by the payment in cash for each share of such stock so redeemed an amount equal to one hundred and five per cent. (105%) of the par value thereof and the amount of all dividends accumulated and unpaid thereon at the redemption date, whether or not earned or declared; provided, however, that notice of the time and place of redemption shall be given to the holders of record of such stock to be redeemed, which notice shall be given by mail in such manner as shall be prescribed by resolution of the Board of Directors, such mailing to be not less than thirty days previous to the redemption date. If less than all the outstanding shares of stock are to be redeemed, such redemption shall be made ratably according to the several holdings thereof, or as nearly ratably as may be without redeeming fractions of shares, as in such report and any other reports shall be determined at the time by the Board of Directors. From and after the date of redemption specified in such notice (unless default be made by the Corporation in duly paying the redemption price) the holders of the shares designated for such redemption shall cease to have on account thereof any right except the right to receive without interest the redemption price. The Corporation may also purchase from any holder thereof, any of the Series A Preferred Stock to the extent now or hereafter permitted by law.

"(d) After full cumulative dividends as aforesaid upon the Series A Preferred Stock, and upon all other stock ranking on a parity with or having a priority over the Series A Preferred Stock as to dividends, shall have been paid or set apart for payment in due course for all past quarterly dividend periods, and for the then current quarterly dividend period, the Corporation shall on February 1, 1966, and thereafter semi-annually on each August 1 and February 1 so long as any of the Series A Preferred Stock shall be outstanding, appropriate and set aside from the net profits arising from its business, as a Sinking Fund to be applied as hereinafter set forth, an amount equal to one per cent. (1%) (being at the rate of two per cent. per annum) of the par value of the greatest number of shares of Series A Preferred Stock theretofore issued after deducting from such greatest amount, the amount of any Series A Preferred Stock retired otherwise than through or for the Sinking Fund. The obligation so to appropriate moneys into the Sinking Fund shall be cumulative, so that if on any Sinking Fund payment date the amounts so required to be appropriated and set aside shall not be so appropriated and set aside, or such amounts shall not be credited to the Sinking Fund as hereinafter set forth, the amount of such deficiency shall be made good before any dividends shall be declared and paid upon any class of stock subordinate to the Series A Preferred Stock as to dividends. The moneys so appropriated and set aside shall be used only in the purchase of shares of Series A Preferred Stock in the open market or at private sale or upon any stock exchange, at a price not exceeding 105% of the par value thereof plus dividends accrued or in arrears at the date of purchase. If three months after any Sinking Fund payment date there shall remain in the Sinking Fund Fifty Thousand Dollars ($50,000) or more, the Corporation shall forthwith publish for at least two times in two daily newspapers published and of general circulation in the Borough of Manhattan,

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City and State of New York, a notice setting forth that the Corporation will at a stated place and on a stated date not earlier than ten days nor later than thirty days after the last such publication, purchase at the most advantageous prices tendered but not exceeding the redemption price as aforesaid, and the Corporation shall so purchase at such prices if tendered, a sufficient number of shares of Series A Preferred Stock to exhaust as nearly as may be the moneys in the Sinking Fund. Such purchases shall be made from the shares tendered for sale in the manner determined from time to time by the Board of Directors. Any moneys in the Sinking Fund not so used in the retirement of Series A Preferred Stock voluntarily or upon tenders as aforesaid, shall be credited upon the obligation of the Corporation at the next succeeding Sinking Fund payment date or dates to appropriate and set aside moneys in the Sinking Fund.

"If the Corporation shall have purchased or acquired otherwise than out of moneys appropriated and set aside in the Sinking Fund, any share or shares of the Series A Preferred Stock, the Corporation shall be entitled upon any succeeding Sinking Fund payment date, to a credit upon its obligation so to appropriate and set aside moneys in the Sinking Fund by retiring such stock, in an amount equal to the redemption price of such stock. If the credit to which the Corporation is entitled upon any Sinking Fund payment date exceeds the obligation of the Corporation on that date to set aside moneys in the Sinking Fund, the amount of such excess shall be credited upon the obligation of the Corporation at the next succeeding Sinking Fund payment date or dates to appropriate and set aside moneys in the Sinking Fund.

"The certificates for all shares of Series A Preferred Stock purchased by the Corporation for or through the Sinking Fund, or redeemed, shall be cancelled, and such stock shall have the status of authorized but unissued stock of the Corporation.

"(e) In case (1) the Corporation shall be in default in the payment of four quarterly instalments of the dividends payable on the Series A Preferred Stock, or in case (2) a continuous period of twenty-four months shall have elapsed during which the Corporation shall at no time have fully paid up all dividends due on such stock, then and in either such case the holders of the Series A Preferred Stock present thereat in person or by proxy, voting as a class, shall be entitled to elect two Directors of the Corporation at the annual meeting of the Corporation next ensuing, and at each succeeding annual meeting until all defaults in the payment of dividends upon the Series A Preferred Stock have been made good, after which time such right as a class to elect two Directors shall cease, but such right shall revive and in turn shall cease from time to time under the respective conditions aforesaid. Except as aforesaid and except as provided in the following sub-paragraph (f), the holders of the Series A Preferred Stock shall not be entitled to vote nor to receive notice of any meeting of stockholders.

"(f) The Corporation, so long as any of the Series A Preferred Stock is outstanding, will not without the affirmative vote or written consent of the holders of a majority of the Series A Preferred Stock outstanding, issue any preferred stock having equal or prior rank as to dividends or upon liquidation, or create or incur any capital indebtedness (as below defined), if by such issue or creation or incurrence the sum total of the amount of Series A Preferred Stock then outstanding plus the amount of such additional preferred stock of equal or prior rank then proposed to be issued plus any amount of such preferred stock outstanding plus all such capital indebtedness including any then proposed to be created or incurred, shall aggregate more than sixty per cent. (60%) of the then value (determined as below provided) of the assets of the Corporation plus the value (determined as below provided) of the net consideration to be received by the Corporation for the issuance of such additional stock or the creation or incurrence of such additional capital indebtedness, after deducting in any such computation from such sum total of preferred stock and capital indebtedness, and also from such assets, the amount of any cash and any obligations of the Government of the United States of America, at the time owned by the Corporation, other than cash or such Government obligations received or to be received for the proposed issuance of such stock or the creation or incurrence of such indebtedness.

"For the purposes of this sub-paragraph (f) as well as the succeeding sub-paragraph (g), the value of the assets of the Corporation shall be such as shall be determined from time to time in the manner

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provided by resolution of the Board of Directors adopted at or prior to the first issuance of Series A Preferred Stock.

"As used in this sub-paragraph (f), the term 'capital indebtedness' is defined to mean all indebtedness of every kind, other than indebtedness for a term not exceeding one year incurred for the current requirements of the Corporation, such as interest, taxes, rentals, dividends (excluding dividends on any stock subordinate to the Series A Preferred Stock as to dividends) and general administrative expenses.

"(g) The Corporation, so long as any of the Series A Preferred Stock is outstanding, will not declare and pay any dividends upon the common stock or upon any other stock subordinate as to dividends to the Series A Preferred Stock, if at the time of the declaration of such dividend, the value (determined as above provided) of the assets of the Corporation, after deducting the amount of such dividend, shall be less than one and two-third times the sum total of the outstanding Series A Preferred Stock plus any other outstanding preferred stock of equal or prior rank as to dividends plus all debt of the Corporation of every kind, after deducting in any such computation from both such value of assets and from such sum total of such preferred stock and debt, the amount of any cash and any obligations of the Government of the United States of America at the time owned by the Corporation.

"(h) The remaining shares of Preferred Stock or any thereof may, subject to the provisions of the foregoing sub-paragraph (f), be issued as Cumulative 5½% Preferred Stock Series A, or may be issued with such other fixed annual dividend rate, redemption price, preferences, voting powers, conversion rights, restrictions and qualifications thereof as the Board of Directors prior to the issue thereof shall determine in the manner provided by law; and the Board of Directors shall have the power at any time and from time to time, to classify or reclassify any unissued stock (including the aforesaid Preferred Stock) by fixing or altering in any one or more specified respects, before the issue thereof, the preferences, voting powers, restrictions and qualifications of, the fixed annual dividends on, and the times and places of redemption of, the redemption price of, and the conversion rights of, such stock.

"(i) After full cumulative dividends as aforesaid upon the Series A Preferred Stock for all past quarterly dividend periods and for the current quarterly dividend period have been paid or declared and set aside for payment in due course, and after compliance with sub-paragraph (d) of this Article Sixth in respect of any sums of money then required to be appropriated and set aside, then and not otherwise dividends may be declared upon and paid to the holders of the common stock to the exclusion of the holders of the Series A Preferred Stock.

"(j) The holders of the common stock shall be entitled to cast one vote for each share of such stock upon any proposition submitted at any meeting of stockholders, including the election of Directors when in order; and such voting right shall subsist irrespective of the value or any variation of value of the consideration for which the issues of such stock from time to time shall have been made. Nothing herein contained shall be deemed to limit the right of the Corporation in any manner permitted by law to confer special or exclusive voting rights for any purpose upon any class of preferred stock or special stock hereafter created, if not in derogation or limitation of the voting rights conferred on the Series A Preferred Stock.

"(k) The holders of the $4 Prior Preferred Convertible Stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the net earnings of the Corporation or from its surplus, at the rate of Four Dollars ($4.00) per share per annum, and no more, payable semi-annually on the first day of each April and October. Such dividends shall be cumulative from October 1, 1953. Such dividends shall be paid or declared and set apart for payment in due course before any dividends shall be paid or set apart for payment upon the 6% Convertible Preferred Stock, the Preferred Stock or the Common Stock of the Corporation, so that if, for any semi-annual dividend period, the dividend on the $4 Prior Preferred Convertible Stock at the rate of Four Dollars ($4.00) per share per annum shall not have been paid, or declared and set apart for payment in due course, the deficiency shall be fully paid, or set apart

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for payment in due course, before any dividend shall be paid or set apart for the 6% Convertible Preferred Stock, the Preferred Stock or the Common Stock of the Corporation. The holders of the $4 Prior Preferred Convertible Stock shall not be entitled to receive any dividends or share in the profits beyond the Four Dollars ($4.00) per share per annum aforesaid, whether payable in cash, stock or property.

"(l) In the event of the liquidation or dissolution of the Corporation, except as provided in Article Tenth of the Charter of the Corporation, or in the event of the sale of substantially all of the assets of the Corporation, the holders of the $4 Prior Preferred Convertible Stock then outstanding shall be entitled to receive, out of the assets (whether capital or surplus) of the Corporation, before any payment shall be made to the holders of the 6% Convertible Preferred Stock, the Preferred Stock or the Common Stock of the Corporation, the amount of Eighty Dollars ($80) for each of their respective shares, and all dividends accumulated and unpaid thereon, whether or not earned or declared. After payment in full in either such case of said amounts to the holders of said $4 Prior Preferred Convertible Stock, the remaining assets of the Corporation shall be distributed to the holders of the 6% Convertible Preferred Stock, the Preferred Stock or the Common Stock according to their respective rights.

"(m) The $4 Prior Preferred Convertible Stock at the time outstanding, or from time to time any amount thereof, may be redeemed, at the option of the Corporation, by the payment in cash for each share of such stock so redeemed of Eighty dollars ($80) and the amount of all dividends accumulated and unpaid thereon at the redemption date, whether or not earned or declared; provided, however, that notice of the time and place of redemption shall be given to the holders of record of such stock to be redeemed, which notice shall be given by mail in such manner as shall be prescribed by resolution of the Board of Directors, such mailing to be not less than thirty days previous to the redemption date. If less than all the outstanding shares of stock are to be redeemed, such redemption shall be made ratably according to the several holdings thereof, or as nearly ratably as may be without redeeming fractions of shares, as in such respect and any other respects shall be determined at the time by the Board of Directors. From and after the date of redemption specified in such notice (unless default be made by the Corporation in duly paying the redemption price), the holders of the shares designated for such redemption shall cease to have on account thereof any right except the right to receive without interest the redemption price. The Corporation may also purchase from any holder thereof any of the $4 Prior Preferred Convertible Stock to the extent now or hereafter permitted by law.

"(n) The Board of Directors of the Corporation may offer, at such times as it deems advisable, to the holders of the Corporation's Prior Preferred Convertible Stock, on a share for share basis, 28,367 shares of the Corporation's $4 Prior Preferred Convertible Stock. The actual value of the said Prior Preferred Convertible Stock is hereby declared to be its liquidating value, namely, $80.00 per share, plus all dividends accumulated and unpaid thereon to the date such exchange is made effective, which value is also declared to be the value on the same date of each share of the said $4 Prior Preferred Convertible Stock. The Corporation, so long as any of the $4 Prior Preferred Convertible Stock is outstanding, will not, without the affirmative vote or written consent of the holders of two-thirds of the $4 Prior Preferred Convertible Stock outstanding, issue any other class of stock on a parity with or having priority over the $4 Prior Preferred Convertible Stock or alter materially any provision of this Certificate of Incorporation, or of the By-Laws of the Corporation, with respect to the $4 Prior Preferred Convertible Stock.

"(o) The holders of the $4 Prior Preferred Convertible Stock present thereat in person or by proxy, voting as a class, shall be entitled to elect two Directors of the Corporation at each annual meeting of the Corporation.

"(p) The holders of $4 Prior Preferred Convertible Stock shall have the following conversion rights:

"(1) Each holder of $4 Prior Preferred Convertible Stock may at his option at any time prior to five days before the date fixed for redemption thereof, convert any or all of his shares of such stock into fully paid and non-assessable shares of the present Common Stock, but without adjustment for dividends in respect of either such shares or the Common Stock into which they are converted, in the

ratio (subject to adjustment as hereinafter provided) of 16 shares of the present Common Stock for each share of $4 Prior Preferred Convertible Stock surrendered for conversion, upon the surrender in transferable form to the Corporation of the certificate or certificates of $4 Prior Preferred Convertible Stock so to be converted, accompanied by written notice to the Corporation of the election of the holder to make such conversion of the certificate or certificates for $4 Prior Preferred Convertible Stock so to be converted and the payment of any taxes payable upon such conversion.

"(2) The deposit above provided of any $4 Prior Preferred Convertible Stock and accompanying notice and payment shall be deemed sufficient for all purposes to constitute a conversion of said $4 Prior Preferred Convertible Stock and the holder of record thereof shall be deemed to have become a holder of record of the number of shares of Common Stock to which he shall be entitled upon such conversion and to have ceased to be a holder of record of $4 Prior Preferred Convertible Stock as of the date upon which he shall have deposited such $4 Prior Preferred Convertible Stock and accompanying notice and payment, subject to any applicable provision of law regulating the right to vote and subject to the right of the Board of Directors at any time in its discretion to fix a period or periods not exceeding an aggregate of eight weeks in any calendar year and not exceeding forty days at any one time during which the books of the Corporation shall be closed and during which holders of record of $4 Prior Preferred Convertible Stock who convert such stock as aforesaid shall, nevertheless, not be deemed to have become holders of record of Common Stock or to have ceased to be holders of record of $4 Prior Preferred Convertible Stock.

"(3) If at any time, or from time to time, the Corporation shall change the outstanding shares of the present Common Stock into the same or a different number of shares of Common Stock, or if such Common Stock is reclassified, exchanged or otherwise changed into a different number of shares of stock with or without par value, of the same or any other class or classes (hereinafter called "New Stock"), thereafter the $4 Prior Preferred Convertible Stock then outstanding shall be convertible into the New Stock on a basis which shall be the equivalent of the basis of conversion which would have existed if the outstanding shares of the present Common Stock had not been so reclassified, exchanged or otherwise changed.

"(4) If at any time, or from time to time, the Corporation shall declare and pay on or in respect of the present Common Stock, or on or in respect of any New Stock into which the present Common Stock shall have been changed as herein provided, any dividend or dividends in shares of stock of any class now authorized or hereafter created, each holder of $4 Prior Preferred Convertible Stock then outstanding upon conversion thereof shall be entitled to receive the shares of Common Stock or New Stock to which he shall become entitled on such conversion, as hereinabove provided, and in addition a number of shares of the class or classes of stock in which any such dividend or dividends were paid equal to such stock dividend or dividends paid on or in respect of the same amount of Common Stock or New Stock, as the case may be.

"(5) The Corporation shall not issue fractions of shares of the Common Stock upon conversion of the $4 Prior Preferred Convertible Stock and in lieu thereof the Corporation shall either issue fractional scrip certificates, or make payment for such fractional share in cash at the rate of $5 for such whole share, as the Board of Directors may determine."

"(q) The holders of the 6% Convertible Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the net earnings of the Corporation or from its surplus, at the rate of six per cent. per annum, and no more, upon the par value thereof, payable semi-annually on the first day of each April and October. Such dividends shall be cumulative from May 1, 1955, and such dividends shall be paid or declared and set apart for payment in due course before any dividends shall be paid or set apart for payment upon the Preferred Stock or the Common Stock of the Corporation, so that if, for any semi-annual dividend period, the dividend on the 6% Convertible Preferred Stock at the rate of 6% per

annum shall not have been paid, or declared and set apart for payment in due course, the deficiency shall be fully paid, or set apart for payment in due course, before any dividend shall be paid or set apart for the Preferred Stock or the Common Stock of the Corporation. The holders of the 6% Convertible Preferred Stock shall not be entitled to receive any dividends or share in the profits beyond the six per cent. aforesaid, whether payable in cash, stock, or property.

"(r) In the event of the voluntary liquidation or dissolution of the Corporation, except as provided in Article Tenth of the Charter of the Corporation, or in the event of the sale of substantially all of the assets of the Corporation, the holders of the 6% Convertible Preferred Stock then outstanding shall be entitled to receive, out of the assets (whether capital or surplus) of the Corporation, before any payment shall be made to the holders of the Preferred Stock or the Common Stock of the Corporation, an amount equal to 105% of the par value of their respective shares, and all dividends accumulated and unpaid thereon, whether or not earned or declared. In the event of the involuntary liquidation or dissolution of the Corporation, the holders of the 6% Convertible Preferred Stock then outstanding shall be entitled to receive out of the assets (whether capital or surplus) of the Corporation, an amount equal to the par value of their respective shares, and all dividends accumulated and unpaid thereon, whether or not earned or declared. After payment in full in either such case of said amounts to the holders of said 6% Convertible Preferred Stock, the remaining assets of the Corporation shall be distributed to the holders of the Preferred Stock or the Common Stock according to their respective rights.

"(s) At any time subsequent to May 1, 1970, but not before, the 6% Convertible Preferred Stock at the time outstanding, or from time to time any amount thereof, may be redeemed, at the option of the Corporation, by the payment in cash for each share of such stock so redeemed an amount equal to one hundred and five per cent. (105%) of the par value thereof and the amount of all dividends accumulated and unpaid thereon at the redemption date, whether or not earned or declared; provided, however, that notice of the time and place of redemption shall be given to the holders of record of such stock to be redeemed, which notice shall be given by mail in such manner as shall be prescribed by resolution of the Board of Directors, such mailing to be not less than thirty days previous to the redemption date. If less than all the outstanding shares of stock are to be redeemed, such redemption shall be made ratably according to the several holdings thereof, or as nearly ratably as may be without redeeming fractions of shares, as in such respect and any other respects shall be determined at the time by the Board of Directors. From and after the date of redemption specified in such notice (unless default be made by the Corporation in duly paying the redemption price), the holders of the shares designated for such redemption shall cease to have on account thereof any right except the right to receive without interest the redemption price. However, the Corporation may, at any time, purchase from any holder thereof any of the 6% Convertible Preferred Stock to the extent now or hereafter permitted by law.

"(t) The Board of Directors of the Corporation may offer, at such times as it deems advisable, to the holders of the Corporation's Series A Preferred Stock, on the basis of ten shares of 6% Convertible Preferred Stock for each share of the Corporation's Series A Preferred Stock, 1,367,440 shares of the Corporation's 6% Convertible Preferred Stock. The actual value of the said Series A Prefetred Stock for such purpose is hereby declared to be its voluntary liquidating value, namely, $105.00 per share, plus all dividends accumulated and unpaid thereon to May 1, 1955, which value is also declared to be ten times the value on the same date of each share of the said 6% Convertible Preferred Stock. The Corporation, so long as any of the 6% Convertible Preferred Stock is outstanding, will not, without the affirmative vote or written consent of the holders of two-thirds of the 6% Convertible Preferred Stock outstanding, issue any other class of stock on a parity with or having priority over the 6% Convertible Preferred Stock or alter materially any provision of this Certificate of Incorporation, or of the By-Laws of the Corporation, with respect to the 6% Convertible Preferred Stock.

"(u) The holders of the 6% Convertible Preferred Stock present thereat in person or by proxy, voting as a class, shall be entitled to elect two Directors of the Corporation at each annual meeting of the Corporation.

"(v) The holders of the 6% Convertible Preferred Stock shall have the following conversion rights:

"(1) Each holder of 6% Convertible Preferred Stock may at his option at any time prior to five days before the date fixed for redemption thereof, upon payment to the Corporation of $3.75 per share of Common Stock into which such share is convertible, convert any or all of his shares of such stock into fully paid and non-assessable shares of the present Common Stock, but without adjustment for dividends in respect of either such shares or the Common Stock into which they are converted, in such ratio (subject to adjustment as hereinafter provided) of shares of the present Common Stock to shares of 6% Convertible Preferred Stock surrendered for conversion as shall be determined by resolution of the Board of Directors, upon the surrender in transferable form to the Corporation of the certificate or certificates of 6% Convertible Preferred Stock so to be converted, accompanied by written notice to the Corporation of the election of the holder to make such conversion of the certificate or certificates for 6% Convertible Preferred Stock so to be converted and the payment of any amounts, including taxes, payable upon such conversion.

"(2) The deposit above provided of any 6% Convertible Preferred Stock and accompanying notice and payment shall be deemed sufficient for all purposes to constitute a conversion of said 6% Convertible Preferred Stock and the holder of record thereof shall be deemed to have become a holder of record of the number of shares of Common Stock to which he shall be entitled upon such conversion and to have ceased to be a holder of record of 6% Convertible Preferred Stock as of the date upon which he shall have deposited such 6% Convertible Preferred Stock and accompanying notice and payment, subject to any applicable provision of law regulating the right to vote and subject to the right of the Board of Directors at any time in its discretion to fix a period or periods not exceeding an aggregate of eight weeks in any calendar year and not exceeding twenty days at any one time during which the books of the Corporation shall be closed and during which holders of record of 6% Convertible Preferred Stock who convert such stock as aforesaid shall, nevertheless, not be deemed to have become holders of record of Common Stock or to have ceased to be holders of record of 6% Convertible Preferred Stock.

"(3) If at any time, or from time to time, the Corporation shall change the outstanding shares of the present Common Stock into the same or a different number of shares of Common Stock, or if such Common Stock is reclassified, exchanged or otherwise changed into a different number of shares of stock with or without par value, of the same or any other class or classes (hereinafter called 'New Stock'), thereafter the 6% Convertible Preferred Stock then outstanding shall be convertible into the New Stock on a basis which shall be the equivalent of the basis of conversion which would have existed if the outstanding shares of the present Common Stock had not been so reclassified, exchanged or otherwise changed.

"(4) If at any time, or from time to time, the Corporation shall declare and pay on or in respect of the present Common Stock, or on or in respect of any New Stock into which the present Common Stock shall have been changed as herein provided, any dividend or dividends in shares of stock of any class now authorized or hereafter created, each holder of 6% Convertible Preferred Stock then outstanding upon conversion thereof shall be entitled to receive the shares of Common Stock or New Stock to which he shall become entitled on such conversion, as hereinabove provided, and in addition a number of shares of the class or classes of stock in which any such dividend or dividends were paid equal to such stock dividend or dividends paid on or in respect of the same amount of Common Stock or New Stock, as the case may be.

"(5) The Corporation shall not issue fractions of shares of the Common Stock upon conversion of the 6% Convertible Preferred Stock and in lieu thereof the Corporation shall, after aggregating the total number of shares being converted by a holder at any one time, make payment for such fractional share in cash in an amount equal to such fraction multiplied by the excess of the closing price on the New York Stock Exchange of the Corporation's Common Stock, on the effective date of such conversion (or if no sale took place on such date then by the closing price on the last preceding day on which a sale was made) over $3.75."

"SEVENTH: The following provisions are adopted for the purpose of defining, limiting and regulating the powers of the Corporation and the directors and stockholders; *provided, however*, that no such powers shall be exercised to abrogate or alter any of the terms of the outstanding Series A Preferred Stock;

"(a) Any action required by law to be taken or authorized by the affirmative vote of the holders of a majority or other designated proportion of the shares or of the shares of each class, or to be otherwise taken or to be authorized by vote of the stockholders shall be effective and valid if taken or authorized by the vote of the holders of a majority in number of the shares outstanding and entitled to vote thereon.

"(b) The Corporation may sell, lease or exchange all of its property and franchises upon the consent of, and for such consideration and upon such terms as may be approved by, the holders of a majority in number of the shares outstanding and entitled to vote thereon expressed in writing or by a vote at a meeting called for that purpose in the manner provided by the by-laws of the Corporation for special meetings of stockholders.

"(c) The Corporation may close its affairs and be dissolved in the manner provided by law, upon the vote of a majority of the whole Board of Directors and the vote of the holders of a majority in number of the shares outstanding and entitled to vote thereon.

"(d) Upon the written consent or the vote of the holders of a majority in number of the shares outstanding and entitled to vote thereon (1) any or every statute of the State of Maryland hereafter enacted, whereby the rights, powers or privileges of the stockholders of corporations organized under the general laws of said State are increased, diminished or in any way affected, or whereby effect is given to the action taken by any part less than all of the stockholders of any such corporation, shall apply to the Corporation and shall be binding not only upon the Corporation but upon every stockholder thereof to the same extent as if such statute had been in force at the date of the making and filing of the certificate of incorporation of the Corporation, and/or (2) amendments to the certificate of incorporation, authorized by the laws of the State of Maryland at the time of the making of such amendments, may be made.

"(e) The Board of Directors of the Corporation is hereby empowered to authorize the issuance from time to time of shares of the stock of the Corporation, without par value, of any class, whether now or hereafter authorized, and of securities convertible into shares of its stock, without par value, of any class, for such considerations and on such terms as said Board of Directors may deem advisable, subject to such limitations and restrictions, if any, as may be set forth in the by-laws of the Corporation.

"The Board of Directors of the Corporation is hereby empowered to authorize the issuance from time to time of all or any part of the one million five hundred thousand shares of the preferred stock of the Corporation of the par value of one hundred dollars ($100) each, as fully paid and non-assessable shares for a minimum price of not less than ninety dollars ($90) for each share thereof.

"The Board of Directors of the Corporation is hereby empowered to authorize the issuance from time to time of not exceeding thirty-five million dollars ($35,000,000) principal amount of convertible securities of the Corporation for a minimum price of not less than ninety per cent. of the principal amount thereof, which securities shall be convertible as to each one thousand dollars ($1,000) principal amount thereof, into seven (7) shares of the preferred stock of the Corporation of the par value of One Hundred Dollars ($100) each and ten (10) shares of the common stock of the Corporation without nominal or par value, such conversion to be made at any time on or before the maturity or earlier redemption of such convertible securities. Provision may be made in such convertible securities for the protection of the value of the conversion privilege in cases of further issuance of shares of stock, and in consolidations and mergers and in respect of other appropriate contingencies.

"(f) The Corporation, at any time and from time to time, may issue its stock of any class for a consideration of which or of the value of which a part only shall be contributed as capital, and the remainder as reserve or surplus. Any losses at any time incurred by the Corporation, or depreciation in

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the value of assets, as well as dividends upon any preferred stock of the Corporation but not upon the common stock, may be charged against any reserve or surplus so established; and such reserve or surplus may be reduced from time to time, by the Board of Directors for any of the purposes above specified or by transfer to capital account or otherwise.

"(g) The Board of Directors shall have the general management and control of all the property of the Corporation and may exercise all the powers of the Corporation, except such as are by law conferred upon or reserved to the stockholders. Without limiting the generality of the foregoing powers and subject to and unless prohibited by the statutes of the State of Maryland, the Board of Directors, without consent or other action of the stockholders of the Corporation, may authorize the Corporation to purchase, acquire, hold, lease, mortgage, pledge, sell or convey such property, real and personal, without as well as within the State of Maryland, as the Board of Directors may from time to time determine, and in payment for any property or for cash, to issue or cause to be issued stock of the Corporation, or warrants or options to purchase stock or other securities, or bonds, debentures, notes, or other obligations thereof, secured or unsecured.

"EIGHTH: No contract or other transaction between the Corporation and any other person, firm or corporation shall be in any way affected or invalidated by the fact that any Director of this Corporation is pecuniarily or otherwise interested in any such act or transaction, or is a member of a firm, or an officer, director or stockholder of or in any corporation which is interested pecuniarily or otherwise in any such contract or transaction; any Director individually, or any firm of which any Director may be a member, or any corporation in which any Director may be interested pecuniarily or otherwise, may be a party to any contract or transaction with the Corporation, provided that the fact that he or such firm or corporation is so interested shall have been known to the Board of Directors or a majority thereof, and any Director of the Corporation who is also a director or officer or stockholder or who is pecuniarily or otherwise interested in any such other firm or corporation may be counted in determining the existence of a quorum at any meeting of the Board of Directors of the Corporation which shall authorize any such contract or transaction, and may vote thereat to authorize any such contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

"Any contract, transaction or act of the Corporation or of the Board of Directors or of any Committee, or of any officer, which shall be ratified by a majority of a quorum of the stockholders at any annual meeting, or at any special meeting called for such purpose shall be as valid and binding as though ratified by every stockholder of the Corporation.

"NINTH: The holders of the common stock shall be entitled to purchase ratably according to their respective holdings any shares of common stock (voting or non-voting) of the Corporation issued or sold for cash, and (except as hereinafter provided) any stock purchase warrants or other option rights which may be issued giving the right to purchase shares of such common stock for cash, but in either such case only at such prices and during such period or periods and upon such terms as may be determined from time to time by the Board of Directors; provided, however, that such right to purchase shall not apply to any of the following, viz.: (a) any such stock purchase warrants or other option rights issued attached to or in connection with the issue or sale of, bonds, preferred stock or other securities, or any shares of common stock issued upon the exercise of such warrants or other rights; (b) any shares of common stock issued upon conversion of bonds, preferred stock or other securities convertible in whole or in part into common stock; (c) the offering, sale and issuance of, or the granting of options to purchase, up to but not exceeding 250,000 shares of common stock to such directors, officers and employees of the Corporation in such amounts, upon such terms and conditions, at such time or times, and for such consideration as the Board of Directors in its discretion may determine; or (d) stock purchase warrants for the purchase of 1,725,000 shares of common stock initially to be issued upon the organization of the Corporation, or any shares of common stock issued upon the exercise of such warrants. Except as aforesaid, no stockholder of the

Corporation shall have any preemptive or preferential right to subscribe for or to purchase any shares of any class of stock of the Corporation, whether now or hereafter authorized, or to subscribe for or to purchase any securities convertible into stock of the Corporation, or stock purchase warrants or other option rights to purchase stock, other than such rights of subscription or purchase, if any, and at such price or prices, as the Board of Directors in its discretion from time to time may determine."

"TENTH: Upon the affirmative vote of the holders of a majority in number of shares outstanding and entitled to vote thereon, and upon vote of the Board of Directors, in order to effect the reincorporation or reorganization of the Corporation without a liquidation or winding up:

"All of the property, franchises, rights and assets of the Corporation may be sold and transferred as an entirety to a new company to be organized under the laws of the United States, the State of Maryland, or of any other state of the United States, for the purpose of so taking over all the property, franchises, rights and assets of the Corporation, with the same or a different authorized number of shares of stock, and with the same preferences, voting powers, restrictions and qualifications thereof as may then attach to the classes of stock of the Corporation then outstanding (provided that the whole or any part of such stock or of any class thereof may be stock with or without a nominal or par value), the consideration for such sale and transfer to be the assumption by such new company of all of the then outstanding liabilities of the Corporation and the issuance and delivery by the new company of shares of stock (any or all thereof either with or without nominal or par value) of such new company of the several classes into which the stock of the Corporation is then divided equal in number to the number of shares of stock of the Corporation of said several classes then outstanding. In the event of such sale and transfer each holder of stock in the Corporation agrees, so far as he may be so permitted by the laws of Maryland, forthwith to surrender for cancellation his certificate or certificates for stock of the Corporation and to receive and accept in exchange therefor, as his full and final distributive share of the proceeds of such sale and transfer and of the assets of the Corporation, a number of shares of the stock of the new company, of the class corresponding to the class of the shares surrendered, equal in number to the shares of stock of the Corporation so surrendered, and in the event of such sale and transfer no holder of any of the stock of the Corporation shall have any rights or interests in or against the Corporation except the right upon surrender of his certificates as aforesaid, properly endorsed, to receive from the Corporation certificates for such shares of such new company as herein provided. Such new company may, but need not, have all or any of the powers of the Corporation, and the charter and by-laws of such new company may, but need not, contain all or any of the provisions contained in the charter and by-laws of the Corporation.

"Upon completion of such sale, assignment and transfer, the holders of the stock of the Corporation shall have no rights or interests in or against the Corporation, except the right, upon surrender of certificates for stock of the corporation properly endorsed, to receive from the Corporation certificates for shares of stock of such new company, of the class corresponding to the class of the surrendered shares, equal in number to the number of shares of stock of the Corporation so surrendered.

"ELEVENTH: The Corporation is to have perpetual existence."

ARTICLE 3: The provisions set forth above in ARTICLE 2 constitute all of the provisions of the Charter of the Corporation now in effect.

ARTICLE 4: This restatement of the Charter of the Corporation was authorized by resolution adopted by vote of a majority of the entire Board of Directors at a meeting duly convened and held on March 1, 1955.

ARTICLE 5: No amendment of the Charter of the Corporation is being effected by these Articles of Restatement of the Charter, except as specifically permitted by the provisions of Sec. 13, Art. 23, Ann. Code of Maryland (L. 1951, Ch. 135).

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IN WITNESS WHEREOF, ALLEGHANY CORPORATION has caused these presents to be signed in its name and on its behalf by one of its Vice-Presidents and its corporate seal to be hereunto affixed and attested by its Secretary, on March 7, 1955.

ALLEGHANY CORPORATION

(CORPORATE SEAL)

By *Thomas J. Deegan, Jr.*

Thomas J. Deegan, Jr.
Vice-President

ATTEST:

David W. Wallace

David W. Wallace
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

I HEREBY CERTIFY that on March 7, 1955, before me, the subscriber, a Notary Public of the State of New York, in and for the County of New York, personally appeared THOMAS J. DEEGAN, Jr., a Vice-President of ALLEGHANY CORPORATION, a Maryland corporation, and in the name and on behalf of said Corporation, acknowledged the foregoing Articles of Restatement to be the corporate act of the said Corporation; and at the same time personally appeared DAVID W. WALLACE and made oath in due form of law that he was Secretary of the meeting of the Board of Directors of said Corporation at which the restatement of the Charter was authorized, and that the matters and facts set forth in said Articles of Restatement of Charter are true to the best of his knowledge, information and belief.

WITNESS my hand and notarial seal or stamp the day and year above written.

(Signed) *Daniel A. Zucker*
Notary Public

(NOTARIAL SEAL)

DANIEL A. ZUCKER, Notary Public
State of New York, No. 03-4397300
Qualified in Bronx County
Cert. Filed with N. Y. Co. Clk.
Commission Expires March 30, 1955

STATE TAX COMMISSION OF MARYLAND

THIS IS TO CERTIFY That the within instrument is a true copy of the ARTICLES OF RESTATEMENT OF CHARTER OF ALLEGHANY CORPORATION as approved and received for record by the State Tax Commission of Maryland, on March 8, 1955, at 10:00 A.M. o'clock.

AS WITNESS my hand and official seal of the said Commission at Baltimore this day of , 195

.....
Secretary

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IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-310

INVESTORS DIVERSIFIED SERVICES, INC.

CONDENSED STATEMENT OF NET INCOME

FOR YEARS 1949 AND 1950, BY QUARTERS

	Year 1949					Year 1950				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
INVESTMENT AND CERTIFICATE SERVICING OPERATIONS										
GROSS INCOME										
Interest Income	$2,553,431	$2,774,266	$2,734,610	$2,867,060	$10,929,367	$2,918,817	$2,951,574	$3,096,949	$2,771,388	$11,738,728
Dividend Income	249,509	255,996	236,387	240,448	982,340	215,638	221,913	194,238	224,364	856,153
Certificate Servicing Income	188,228	181,942	170,101	182,207	722,478	179,523	176,538	158,439	174,793	689,293
Private Placement Fees	45,000	51,974	42,750	6,725	146,449	20,000	11,500	5,000	11,000	47,500
Gross Income	$3,036,168	$3,264,178	$3,183,848	$3,296,440	$12,780,634	$3,333,978	$3,361,525	$3,454,626	$3,181,545	$13,331,674
COSTS AND EXPENSES										
Certificate Reserve Accumulation Costs	$3,399,970	$3,102,642	$2,993,590	$3,615,183	$13,111,385	$3,473,834	$2,980,860	$3,165,665	$3,109,100	$12,729,459
Less Recoveries on Terminations	43,361	48,445	48,634	47,979	188,419	48,118	112,094	89,026	78,108	327,346
Net Cost	$3,356,609	$3,054,197	$2,944,956	$3,567,204	$12,922,966	$3,425,716	$2,868,766	$3,076,639	$3,030,992	$12,402,113
Direct Expenses	99,637	72,608	90,269	129,994	392,508	90,587	86,740	76,709	88,941	342,977
Home Office and General Expenses—portion	168,268	167,203	152,799	146,897	635,167	194,577	151,278	132,742	184,771	663,368
Total Costs and Expenses	$3,624,514	$3,294,008	$3,188,024	$3,844,095	$13,950,641	$3,710,880	$3,106,784	$3,286,090	$3,304,704	$13,408,458
INCOME FROM INVESTMENT AND SERVICING	$ (588,346)	$ (29,830)	$ (4,176)	$ (547,655)	$(1,170,007)	$ (376,902)	$ 254,741	$ 168,536	$ (123,159)	$ (76,784)
MORTGAGE OPERATIONS										
GROSS INCOME										
From Subsidiary Companies:										
New Loan Fees	$ (25,940)	$ 115,904	$ 191,967	$ 165,607	$ 447,538	$ 183,401	$ 227,648	$ 265,948	$ 143,399	$ 820,396
Service Fees	116,925	114,536	124,578	132,790	488,829	147,556	158,924	170,825	182,034	659,339
Dividends on Stock of Mortgage Companies	—	—	60,000	105,000	165,000	—	—	—	170,000	170,000
From Others:										
Premiums on Sale of Mortgages	34,284	5,166	26,767	118,843	185,060	61,854	35,865	149,159	59,942	306,820
Service Fees	57,468	57,005	61,503	78,589	254,565	87,076	97,579	100,906	117,316	402,877
Commissions and Participation Project Fees	292,942	501,484	767,313	863,074	2,424,813	1,275,591	1,450,830	1,284,045	2,935,804	6,946,270
Insurance Commissions and Fees	58,720	85,854	125,839	93,476	363,889	140,877	173,341	75,426	138,991	528,635
Gross Income	$ 534,399	$ 879,949	$1,357,967	$1,557,379	$ 4,329,694	$1,896,355	$2,144,187	$2,046,309	$3,747,486	$ 9,834,337
COSTS AND EXPENSES										
Branch Office Operating Expense	$ 201,412	$ 221,607	$ 244,957	$ 296,139	$ 964,115	306,262	$ 341,082	$ 271,515	$ 359,003	$ 1,277,872
General Mortgage Advertising	506	635	348	1,180	2,677	543	133	298	495	1,469
Service Fees—Subsidiary Companies	33,606	34,344	35,488	64,586	168,024	44,218	41,502	38,980	59,662	184,362
Service Fees—Others	55,812	73,694	75,653	62,870	268,029	43,345	44,615	39,052	43,924	170,936
Commissions and Premiums—Subsidiary Cos.	31,770	29,392	39,824	35,653	136,639	32,549	33,418	21,677	6,757	94,401
Commissions and Premiums—Others	4,562	28,316	10,869	21,148	64,895	16,870	16,563	20,031	18,982	72,446
F.N.M.A. Commitment Fees	44,415	221,311	77,618	118,593	461,937	258,927	(434)	(24,281)	(13,503)	(20,709)
Servicing Contract Cancellation Fees	4,788	3,826	—	133,744	142,358	24,715	45,928	1,374	78,134	150,151
Home Office and General Expense—portion	184,904	211,480	202,451	211,459	810,294	213,678	205,975	204,056	272,160	895,869
Total Costs and Expenses	$ 561,775	$ 824,605	$ 687,208	$ 945,380	$ 3,018,968	$ 941,107	$ 728,792	$ 572,702	$ 825,614	$ 3,068,215
INCOME FROM MORTGAGE OPERATIONS	$ (27,376)	$ 55,344	$ 670,759	$ 611,999	$ 1,310,726	$ 955,248	$1,415,395	$1,473,607	$2,921,872	$ 6,766,122

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[fol. 2635]

INVESTORS DIVERSIFIED SERVICES, INC.

CONDENSED STATEMENT OF NET INCOME

FOR YEARS 1949 AND 1950, BY QUARTERS

	Year 1949					Year 1950				
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Total
MANAGEMENT OPERATIONS										
GROSS INCOME										
Management Fees—subsidiary companies	$ 44,565	$ 53,452	$ 55,477	$ 55,479	$ 208,973	$ 45,662	$ 45,814	$ 42,263	$ 40,876	$ 174,615
Management Fees—affiliated fund companies	184,039	108,137	176,167	239,084	707,427	257,872	275,769	298,239	306,509	1,138,389
Total Gross Income	$ 228,604	$ 161,589	$ 231,644	$ 294,563	$ 916,400	$ 303,534	$ 321,583	$ 340,502	$ 347,385	$ 1,313,004
COSTS AND EXPENSES										
Home Office and general expenses—portion	92,937	92,093	87,693	86,599	359,322	88,770	100,494	132,899	139,027	461,190
INCOME FROM MANAGEMENT OPERATIONS	$ 135,667	$ 69,496	$ 143,951	$ 207,964	$ 557,078	$ 214,764	$ 221,089	$ 207,603	$ 208,358	$ 851,814
DISTRIBUTION OPERATIONS										
NET DISTRIBUTION FEES										
SUBSIDIARY COMPANY										
Distribution Fees	$1,102,922	$1,203,773	$ 989,707	$1,176,600	$ 4,473,002	$1,123,167	$1,304,404	$1,133,821	$1,348,031	$ 4,909,423
Commissions Paid	687,879	759,904	616,464	736,578	2,800,825	703,105	833,740	722,479	858,136	3,117,460
Net Fees	$ 415,043	$ 443,869	$ 373,243	$ 440,022	$ 1,672,177	$ 420,062	$ 470,664	$ 411,342	$ 489,895	$ 1,791,963
AFFILIATED COMPANY										
Distribution Fees	$ 684,338	$ 752,656	$ 787,342	$ 2,112	$ 3,156,448	$1,090,294	$1,128,412	$1,158,180	$1,279,269	$ 4,656,155
Commissions Paid	427,237	483,568	489,581	946,055	1,976,441	681,479	700,854	718,424	793,698	2,894,455
Net Fees	$ 257,101	$ 269,088	$ 297,761	$ 356,057	$ 1,180,007	$ 408,815	$ 427,558	$ 439,756	$ 485,571	$ 1,761,700
Total Net Fees	$ 672,144	$ 712,957	$ 671,004	$ 796,079	$ 2,852,184	$ 828,877	$ 898,222	$ 851,098	$ 975,466	$ 3,553,663
OTHER COSTS AND EXPENSES										
Incentive Pay to Sales Representatives	$ 67,581	$ 70,231	$ 49,190	$ 118,742	$ 305,744	$ 87,106	$ 87,107	$ 72,480	$ 153,481	$ 400,174
Sales Agency Collection Fees and Expenses	41,588	69,345	62,446	60,328	233,707	73,790	123,556	157,841	152,314	507,501
Advertising, Sales Promotion and Other Expenses	101,671	132,502	123,975	117,733	475,881	140,135	155,274	143,469	185,132	634,010
Home Office and General Expenses—Portion	102,137	117,650	107,827	129,846	457,460	129,552	121,391	131,850	133,409	516,202
Total Costs and Expenses	$ 312,977	$ 389,728	$ 343,438	$ 426,649	$ 1,472,792	$ 430,583	$ 487,328	$ 505,640	$ 624,336	$ 2,047,887
INCOME FROM DISTRIBUTION OPERATIONS	$ 359,167	$ 323,229	$ 327,566	$ 369,430	$ 1,379,392	$ 398,294	$ 410,894	$ 345,458	$ 351,130	$ 1,505,776
Home Office and general expenses—portion not allocated to specific operations	$ 103,034	$ 151,465	$ 95,137	$ 212,152	$ 561,788	$ 90,936	$ 125,744	$ 121,561	$ 108,567	$ 446,808
INCOME FROM OPERATIONS	$ (223,922)	$ 266,774	$1,042,963	$ 429,586	$ 1,515,401	$1,100,468	$2,176,375	$2,073,643	$3,249,634	$ 8,600,120
Income credits (charges)	(28)	—	(106,276)	(6,825)	(113,129)	(3,812)	62,362	(7,202)	82,763	134,111
INCOME BEFORE INCOME TAXES AND PROFIT (LOSS) ON INVESTMENT TRANSACTIONS	$ (223,950)	$ 266,774	$ 936,687	$ 422,761	$ 1,402,272	$1,096,656	$2,238,737	$2,066,441	$3,332,397	$ 8,734,231
PROFIT (LOSS) ON INVESTMENT TRANSACTIONS										
Securities	$ —	$ (112,591)	$ (516,552)	$ (52,790)	$ (681,933)	$ (171,204)	$ 81,002	$ 3,338	$ 9,012	$ (77,852)
Real Estate	1,256	(76)	2,874	2,214	6,268	41	4,256	1,338	(33,270)	(27,635)
Total	$ 1,256	$ (112,667)	$ (513,678)	$ (50,576)	$ (675,665)	$ (171,163)	$ 85,258	$ 4,676	$ (24,258)	$ (105,487)
INCOME BEFORE INCOME TAXES	$ (222,694)	$ 154,107	$ 423,009	$ 372,185	$ 726,607	$ 925,493	$2,323,995	$2,071,117	$3,308,139	$ 8,628,744
PROVISION FOR INCOME TAXES	—	10,500	166,500	147,000	324,000	294,276	613,625	855,650	828,449	2,592,000
NET INCOME	$ (222,694)	$ 143,607	$ 256,509	$ 225,185	$ 402,607	$ 631,217	$1,710,370	$1,215,467	$2,479,690	$ 6,036,744
Share of Undistributed Earnings of Subsidiaries	221,396	338,642	153,603	249,237	962,878	7,823	482,149	297,203	(369,508)	417,667
Total	$ (1,298)	$ 482,249	$ 410,112	$ 474,422	$ 1,365,485	$ 639,040	$2,192,519	$1,512,670	$2,110,182	$ 6,454,411

INVESTORS DIVERSIFIED SERVICES, INC.

Analysis, by quarters, of the larger items included in "Commissions and participation project fees"
Year Ended December 31, 1950

		Total 1950	1st quarter 1950	2nd quarter 1950	3rd quarter 1950	4th quarter 1950
Los Angeles						
Lakewood Park	Housing Project	$ 718,118.40	$202,154.70	$156,814.50	$ 86,358.26	$ 272,790.94
Encino Park	Housing Project	202,659.80	184,458.10	18,001.70		
Encino Park #2	Housing Project	132,000.00		39,900.00	57,004.49	35,095.51
Lakewood Park	Sale of partnership interest	1,000,000.00				1,000,000.00
Westchester Park	Housing Project	108,500.00		108,500.00		
		2,161,078.20	386,612.80	323,216.20	143,362.75	1,307,886.45
Washington, D. C.						
Shirley Duke	608 Project	707,646.71	228,669.62	189,721.61	211,578.33	77,677.15
Glenmont Forest	Housing Project	165,232.47			111,972.47	53,260.00
		872,879.18	228,669.62	189,721.61	323,550.80	130,937.15
Miami						
Bunche Park	Housing Project	526,306.30		251,487.67	84,217.49	190,601.14
L. B. Corporation	Housing Project	255,214.25				255,214.25
		781,520.55		251,487.67	84,217.49	445,815.39
Cleveland						
Parkway Gardens	608 Project	286,061.88		66,293.24	92,444.32	127,324.32
		4,101,539.81	615,282.42	830,718.72	643,575.36	2,011,963.31

MEMORANDUM

Robert W. Purcell

IDS Purchases for 1949 and 1950

The Alleghany Corporation's 1950 proxy statement showed that Purcell owned 3,828 shares of IDS Class A common stock. These shares were purchased as follows:

Date	Amount	Price per Share
Oct. 1, 1949	223	4.72
Oct. 10, 1949	2,505	5.23
Nov. 17, 1949	150	6.10
Dec. 6, 1949	300	6.11
Jan. 14, 1950	75	6.63
Jan. 16, 1950	300	6.38
Feb. 6, 1950	202	7.50
Feb. 8, 1950	18	6.5
Feb. 10, 1950	55	6.5
	3,828 -- figure shown in 1950 Proxy Statement	

[fol. 2637]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-320

1983

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[fol. 2638]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT, KIRBY EXHIBIT No. K-353

(3900) SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

Re: SADIE ZENN, et al,

Plaintiffs,

J. J. ANZALONE, et al,

Defendants.

Bar Association,
42 West 44th Street,
New York, N.Y.,
January 5, 1956

Before:

HON. ROBERT J. FITZSIMMONS,

Referee.

Appearances:

POMERANTZ, HAUDEK & LEVY, ESQS.,
General Counsel for Plaintiffs,
295 Madison Avenue,
New York, N.Y.

BY: ABRAHAM L. POMERANTZ, ESQ.,
of Counsel

— and.—

[fol. 2639] (3901) DANIEL BLUMENTHAL, ESQ.,
Associated with attorneys for
plaintiff Freda Blumenthal,
470 Fifth Avenue,
New York, N.Y.

GRAUBARD & MOSKOVITZ, ESQS.,
115 Broadway,
New York, N.Y.

—and—

ROSSTON, HORT & BRUSSELL, ESQS.,
Attorneys for Samuel Rosen,
Stockholder,
141 Broadway,
New York, N.Y.

BY: SEYMOUR GRAUBARD, ESQ.,

and

PHILIP KAZON, ESQ.,
of Counsel

ARTHUR W. LICHTENSTEIN, ESQ.,
Attorney for Adelaide Neuwirth,
295 Madison Avenue,
New York, N.Y.

BY: ARTHUR W. LICHTENSTEIN, ESQ.,

and

ALEXANDER KAHAN, ESQ.,
of Counsel

EDWARD ENDELMAN, ESQ.,
Attorney for Sadie B. Unger,
Plaintiff in the Federal Consolidated Action,
225 Broadway,
New York, N.Y.

[fol. 2640] (3902) GEIST & NETTER, ESQS.,
Attorneys for Carl M. Siroty,
Plaintiff-Intervenor in the Federal Court Action,
276 Fifth Avenue,
New York, N.Y.

BY: KARL E. LEIBEL, ESQ.,
of Counsel

SIDNEY L. GARWIN, ESQ.,
Attorney for Plaintiff Henry Mencher,
225 Broadway,
New York, N.Y.

LEVISS & GORDON, ESQS.,
Attorneys for plaintiff Bernard Lieberman,
22 West 42nd Street,
New York, N.Y.

BY: WILLIAM ROSENFELD, ESQ.,
of Counsel

MORRIS J. LEVY, ESQ.,
Attorney for Charles Monheit,
Plaintiff in the Federal Court Action,
216 Broadway,
New York, N.Y.

CHARLES THYNIN, ESQ., and IRVING STEINMAN, ESQ.,
Attorneys for plaintiff Frances Koenig,
50 Broadway,
New York, N.Y.

BY: CHARLES THYNIN, ESQ.,
of Counsel

[fol. 2641] (3903) ABRAHAM MARKOWITZ, ESQ.,
Attorney for Millie Eisenberg,
Plaintiff in the Federal Court Action,
2 Union Avenue,
Amityville, New York

NORMAN ANNENBERG, ESQ.,
Attorney for plaintiff Jeanette Annenberg,
29 Broadway,
New York, N.Y.

TACHNA, PINKUSSOHN & BAUMAN, ESQ.,
Attorneys for L. Tachna & Co.,
Stockholder,

BY: PAUL BAUMAN, ESQ.,
of Counsel

NEMEROV & SHAPIRO, ESQS.,
111 Broadway,
New York, N.Y.

—and—

TROTTA & SPORTA, ESQS.,
25 Broad Street,
New York, N.Y.
Attorneys for Nicholas Schepis, plaintiff in the Consolidated Action,

BY: LEONARD BRUNNER, ESQ.,
of Counsel

PETER GEORGE MARTIN, ESQ.,
Attorney for defendant Alleghany Corporation,
25 Broadway,
New York, N.Y.

[fol. 2642] (3904) LORD, DAY & LORD, ESQS.,
Attorneys for Directors Thomas J. Deegan, Jr., and Robert R. Young; and defendant the New York Central Railroad Company,
25 Broadway,
New York, N.Y.

BY: THOMAS F. DALY, ESQ.,

and

FRANK H. McFADDEN, ESQ.,
of Counsel

SATTERLEE, WARFIELD & STEPHENS,

BY: J. R. CROWLEY, ESQ.,
of Counsel

Appearing for Clint W. Muchison, Sid W. Richardson and Clint W. Muchison, Jr., individually and as partners doing business under the firm name of Murchison Brothers, subject to the provisions of Paragraph 1, Page 3, of the Stipulation of Settlement.

Also Present:

DAVID BERDON & Co.,
Certified Public Accountants for Plaintiffs,
500 Fifth Avenue,
New York, N.Y.

BY: ERIC J. KLINGER, C.P.A.

JOHN CAMPBELL HENRY,
Stockholder representing himself and members of his family

[fol. 2643] (3905) MR. RANDOLPH PHILLIPS,
Present as Consultant to Seymour Graubard, Esq.

MR. DAVID W. WALLACE,
Secretary-Treasurer of the
Alleghany Corporation,
230 Park Avenue,
New York, N.Y.

The Referee: Let us proceed.

Since we last met here a very joyous event has taken place; and I therefore feel it is my duty at this time to offer my own hearty and most sincere congratulations, as well as all of those present, to Mr. Frank H. McFadden, who yesterday was sworn in as a member of the Bar, Appellate Division, First Department.

My every good wish goes out to him.

Mr. Daly: May I note on the record that Mr. McFadden has toiled ably but anonymously here for the past several months, and I would now ask, with Your Honor's permis-
[fol. 2644] sion, that Mr. McFadden's (3906) name be added as of counsel for the defendants represented by my firm.

The Referee: Motion granted.

What is the first order of business today?

Mr. Graubard: Mr. Robert Purcell.

May I state, sir, that Mr. Purcell has made available to me certain files relating to the transactions in 1950, with his counsel's consent—who is Mr. Daly—and that I am reviewing these files at this time.

I think that it might be more expeditious for me to review these for a few minutes longer rather than to interrupt the witness from time to time in the course of his examination.

May I therefore request that we have a few minutes so that I may glance through these files.

Mr. Daly: I have no objection to that, Your Honor; but I must make a correction on the record.

I am not counsel for Mr. Purcell.

Mr. Graubard: Off the record, please.

The Referee: Off the record.

(Discussion off the record.)

[fol. 2645] (3907) The Referee: On the record.

With respect to next week's calendar, we will meet on Thursday and Friday, January 12 and 13, in the Bar Association, at 10:30 a. m.

For counsel's information, Plaintiffs' Exhibit 121 in evidence, which consists of 35 documents, will be remarked as follows: the envelope in which these 35 documents are contained will be marked Plaintiffs' Exhibit 121 in evidence, and the 35 documents contained therein will be marked Plaintiffs' Exhibits 121-A through 121-II in evidence.

(Large envelope, together with 35 documents contained therein, submitted by Mr. Haudek, heretofore marked Plaintiffs' Exhibit 121 in evidence, was received in evidence and marked Plaintiffs' Exhibit 121-A through 121-II, as of this date.)

Mr. Graubard: Mr. Purcell, please.

The Referee: All right, Mr. Purcell, will you please step forward.

[fol. 2646] (3908) Robert W. Purcell, called as a witness, having been first duly sworn by the Referee, testified as follows:

The Referee: Will you please give your full name and address to the stenographer.

The Witness: Robert W. Purcell, Cape Vincent, New York, is my home.

Direct examination.

By Mr. Graubard:

Q. Mr. Purcell, are you here pursuant to a subpoena?

A. I am.

Q. Are you represented by counsel at this hearing?

A. No; I am not.

Q. Are you a member of the Bar of the State of New York?

A. I am.

Q. Are you a resident of the State of New York?

A. Yes.

Q. What is your home address?

A. My home address is Cape Vincent, New York. I have a farm there.

[fol. 2647] (3909) Q. Do you have an address in the City of New York?

A. My office is at 30 Rockefeller Plaza.

Q. Do you have a home address in the City of New York?

A. I have an apartment at 101 East 72nd Street.

Q. Have you had an opportunity to review any portions of the transcript of testimony taken at these hearings?

A. I have reviewed portions of Mr. Young's testimony.

Q. Have you discussed with any of the counsel at this hearing any of the proceedings herein?

A. Yes; I have had some meetings with Mr. Daly and his associates, and I have met Mr. Pomerantz once or twice.

Q. For how long have you known Mr. Robert Young?

A. Since 1937.

Q. Have you worked with Mr. Young continuously since that time?

A. Yes; I would say so.

Q. Would you tell the court what your under- (3910) [fol. 2648] takings have been, in connection with Mr. Young, since 1937?

Mr. Daly: Very briefly, I assume, Your Honor.
The Referee: I would say so.

A. In 1937 I was with the law firm of White & Case in New York, who represented Mr. Young and Mr. Kirby at the time that they acquired the Alleghany and certain Cleveland real estate interests from the Ball family of Muncie, Indiana.

I went to work as a representative of the firm at that time, in that connection.

In 1938 Mr. Young asked me if I would disassociate myself from the firm and go with them exclusively, which I agreed to do.

I then moved to Cleveland and occupied various positions and did a considerable amount of work in connection with the reorganization of the real estate companies, eventually became a house counsel for Alleghany Corporation, and later on a director and vice president of the Corporation, and eventually was vice chairman of its board of directors. [fol. 2649] (3911) Along in the early Forties I went to work for the Chesapeake & Ohio Railway Company, and eventually was its general counsel and vice president, law, of the Chesapeake & Ohio, and vice chairman of its board of directors.

In March, 1953, I relinquished all of those positions in order to accept the presidency of Investors Diversified Services of Minneapolis, and I went to Minneapolis, established residence there, and was its president for a time, and, subsequently, the chairman of the board of directors of that company, a position which I still occupy.

Q. In the course of your duties as chairman of the board of Investors Diversified Services, Mr. Purcell, do you present information concerning Investors Diversified Services to Mr. Young from time to time?

A. Very infrequently now.

Q. Do you still have a social relationship—if you ever did—with Mr. Young?

A. Yes.

Q. Do you have such a relationship with Mr. Allan Kirby?
[fol. 2650] (3912) A. Yes.

Q. In 1953, Mr. Purcell, when you went to Minneapolis, did you take with you any papers or memoranda relating to I.D.S., from Allegheny Corporation?

A. Yes.

Q. Do you have those papers or memoranda with you?

A. The only ones that I have with me, or that I have possession of, I have turned over to you this morning.

Q. But there were other papers that you did take to Minneapolis, which you did not show to me this morning?

A. Yes.

Q. Can you tell the court what those papers consisted of, in general terms?

A. I should say general reports of various kinds, documents relating to the financial condition of the company, and reports of the investment department, of the sales department, of the mortgage department of the company, things of that character.

[fol. 2651] (3913) Q. Did you have any relationship with Mr. Donald Carter in 1949?

A. Just a very casual acquaintance; no business relationship of any kind.

Q. Did you have any discussions in regard to the affairs of Investors Diversified Services, Inc. with Mr. Carter in 1949?

A. None that I recall.

Q. Do you recall any in 1950?

A. If so, they were very casual, purely a matter of passing conversation.

Q. Did you, Mr. Purcell, subsequent to 1950 have conversations with Mr. Carter, or with any of the Murchison family, in regard to I.D.S.?

A. Yes; I had.

Q. With whom, and commencing when?

Again, Mr. Purcell, I am not asking you for specific, detailed conversations after this long period of time, just a summary.

A. I believe I had conversations with Mr. Carter in December of 1953, and with the Murchison Brothers and some of their associates some time in the late summer, early Fall of 1954; and I am sure I spoke with (3914) Mr. Carter again [fol. 2652] in December of 1954.

Of course the Murchisons are represented on the board of directors of I.D.S. Mr. Clint Murchison, Jr. is a member of the board. I have had occasion, at board meetings, to discuss the company's affairs with Mr. Murchison, and Mr. James Clark, too, of course. He is also on the board.

* * * * * * *

[fol. 2653] (3915) A. Oh, oh, many, many conversations with many people. I probably discussed that with people every week.

Q. Were you advised by any persons, during those years, that they would be interested in acquiring large blocks of stocks of I.D.S., if they could do so?

A. None to my recollection.

Q. Were you ever requested by any representative of Alleghany Corporation to advise the Corporation as to whether any persons or institutions would be interested in buying the voting stock of I.D.S. then owned by Alleghany Corporation, during the years 1953, 1954, 1955?

A. Not to my knowledge; I do not recall any such instructions.

Q. You would recall it if it were Mr. Young who asked you to give such information?

A. I think I probably would recall.

Q. And you are certain that Mr. Young did not make such inquiry of you?

A. If I understand the question correctly, I feel quite certain that Mr. Young never instructed me to bring to his attention any inquiries which I might (3916) receive con- [fol. 2654] cerning possible acquisition of the voting stock of I.D.S.

Q. Did Mr. Kirby?

A. No.

Q. Were you ever consulted by any of the representatives of Alleghany Corporation in regard to a proposed sale of non-voting or voting stock to the Murchison interests in 1953?

A. Yes.

Q. When you were so advised, was your opinion asked concerning the market value of such stock?

Mr. Daly: I object to the form of the question.

There is no testimony that he was advised of anything. The previous question was was he consulted.

The Referee: Objection sustained.

Q. Who consulted you in regard to this proposed sale of stock to the Murchison interests in 1953?

A. Mr. Young.

Q. At that time did Mr. Young inquire of you concerning the market value of such stock?

A. No.

[fol. 2655] (3917) Q. Did he inquire of you as to whether you knew of any other person or persons who would be interested in buying such stock?

A. No.

Q. In the interest of brevity, Mr. Purcell, if these same questions were put to you for the years 1954 and 1955, would your answers be the same?

A. Yes.

Q. Were you consulted by Mr. Young or Mr. Kirby or any other representative of Alleghany Corporation, concerning the capabilities of Murchison Brothers to manage and control I.D.S. during the years 1954 and 1955?

Mr. Daly: I object to the form of the question. It assumes that they were going to manage and control.

The Referee: Please repeat the question to me, Mr. Reporter.

(Whereupon, the pending question was read by the reporter, as recorded.)

The Referee: Objection overruled.

A. I am sure that Mr. Young and I discussed, (3918) the [fol. 2656] personalities involved in the Murchison organization and their method of operation.

I can recall his inquiring of me about my relationship with Mr. Clark, and how capable I felt Mr. Clark and the others involved in the setup were, yes.

I would say, "yes"; probably the answer to that question is "yes."

Q. Speaking of Mr. Clark, did you ever discuss with Mr Clark analyses of any corporate securities?

A. Yes.

Q. Did Mr. Clark ever show you any analyses that he had prepared?

A. No; I think not.

Q. Did Mr. Clark ever show you any analyses which had been prepared under his supervision?

A. No; I do not think so.

Q. Do you know whether he himself ever made any financial analysis of any security?

A. I am sure that he did, because he speaks with a good deal of intelligence about various corporate securities which are either in the portfolio or are being considered for the portfolio of Murchison Brothers.

[fol. 2657] (3919) Q. When did you have your discussion or discussions with Mr. Young concerning the Murchison Brothers as controlling factors of I.D.S.?

A. I am sorry, but I will have to have the question read back to me. I am sorry.

Did you say, Mr. Graubard, when did I have those conversations?

Q. Yes, when.

A. I guess I will have to have it read back. I am sorry.

Q. I will rephrase it.

A. Thank you.

Q. Do you recall having any conversations with Mr. Young concerning the Murchison Brothers as potential controlling factors of I.D.S., during the year 1954?

A. Yes; I had such conversations.

Q. When did they take place?

A. I cannot pinpoint the date, but I would say in the late summer or early Fall or middle Fall; I cannot be absolutely sure.

Q. To the best of your ability, do you recall (3920) these [fol. 2658] conversations at that time, Mr. Purcell; and, if so, can you give us the substance of these discussions?

A. Some time during that period Mr. Young called me and told me that he was considering a further sale of I.D.S. voting shares to the Murchison Brothers, and that it could possibly be of such magnitude as to involve control of the company.

He asked me if I would go to Dallas to meet with the Murchisons to answer questions which they might have concerning the affairs of the Corporation, and I did go to Dallas for that purpose.

Q. Do you recall when you went to Dallas?

A. I cannot pinpoint that.

I would say it was late summer, early Fall of 1954.

Q. At that time—referring to the late summer or early Fall of 1954—did you make any suggestion to Mr. Young that persons other than the Murchisons might be interested in acquiring control of I.D.S.?

A. No.

The Referee: (To Witness) Did you have any knowledge at that time that any persons other than (3921) the [fol. 2659] Murchisons might be seeking control of I.D.S.?

The Witness: No, not that I can recall, Mr. Referee.

The Referee: Go ahead, Mr. Graubard.

By Mr. Graubard:

Q. It was generally known at that time that Alleghany Corporation owned some 90 percent of the voting stock?

A. Well, it was less than that, at that time.

At one time they owned that much, but they had made that sale to the Murchisons in 1953.

Of course, everyone knew that I no longer was with Alleghany Corporation, so no such inquiries would have come to me.

Q. Then you did go to Texas in the late summer and early Fall of 1954?

A. Yes.

Q. Did you meet with the Murchison Brothers at that time?

A. Yes; I did.

Q. With whom did you meet?

A. Well, Mr. Clark was there, Mr. John Murchison, [fol. 2660] (3922) Mr. C. W. Murchison, Sr., was there, and I believe Mr. W. C. Murchison, Jr., was also present; and there were two or three others there of the members of their staff; and Mr. Eppler was there, too.

Q. Did they inquire of you concerning certain phases of the activities of I.D.S. and its subsidiaries?

A. They did.

Q. You answered their questions fully?

A. I did.

Q. Had you been instructed or requested by Mr. Young; prior to making this trip, to make an appraisal of the ability of the Murchison Brothers and their associates to properly manage and control I.D.S.?

A. No.

Q. Did you, in the course of your conversation with Mr. Young, volunteer an opinion in regard to that subject?

A. No, not at that time, no.

Q. Did you make any voluntary statement to him along that line, after your visit to Texas?

A. I am sure that I did; I am sure that I told Mr. Young that I felt that this was a group fully (3923) competent to [fol. 2661] assume control of I.D.S.

Q. Since control passed to the Murchisons Brothers, have they materially changed any of the policies of I.D.S. which were in effect previous to their taking control?

A. There have been some changes, yes.

I would not say that they were changes of great magnitude.

Mr. Fitzsimmons, who was president—Joseph M. Fitzsimmons—who was elected president of I.D.S. in the Fall of 1953, when Alleghany still held control, is still president; and I do not think there have been any dramatic changes in policy since that time.

I do believe that we are less active in real estate financing than we were, but that was a change of policy which I believe commenced prior to the change of control, and which has been continued since that time.

That has been a change which took place probably, as I recall, in early 1953.

Q. Does Alleghany Corporation have any direct representation on the board of I. D. S., at the present (3924) time?

[fol. 2662] A. There is nobody on the board of I.D.S. that is connected with Alleghany Corporation.

Q. Do you know whether any persons on the board of I.D.S. have been selected by Alleghany Corporation to serve as directors?

A. I profess I am not sure—I do not think there has been any formal selection.

It is my understanding—although I have not seen the contract—to the best of my knowledge, it is my understanding that Alleghany Corporation has the right to select or designate two directors.

I think, however, that that contract only came into being after the last I.D.S. stockholders' meeting, and at the last I.D.S. stockholders' meeting it is my recollection that Alleghany Corporation still had the right to vote, and elected the present board of directors.

Therefore, this exercise of the right of designation will only come into being at the 1956 stockholders' meeting.

Q. So far as you know, Mr. Purcell, Alleghany (3925) [fol. 2663] Corporation has not requested the resignation of any directors in order to replace them with persons of their own selection?

A. Since when?

Q. Since Murchison Brothers acquired control.

A. No.

Q. Have you been requested, informally or formally, by Alleghany Corporation, to serve as one of Alleghany Corporation's watchdog directors on the board of I.D.S.?

A. No; there has been no conversation along that line.

Mr. Daly: I object to the form of the question and move to strike the answer.

The Referee: I will sustain the objection as to form, comparing the witness to a watchdog.

The motion to strike is granted.

Q. Do you know whether any director of I.D.S. has been requested by Alleghany Corporation to report to Alleghany Corporation in regard to current matters of I.D.S.?

A. I think that Mr. Eppler has been rendering periodic but probably oral reports to Mr. Young; and I am sure that he does to Mr. Kirby; and, of course, (3926) I still [fol. 2664] advise Mr. Young occasionally with respect to matters of importance in the I.D.S. picture.

The Referee: (To Witness) What is the percentage of Alleghany's stock control in I.D.S. at the present time, both voting and non voting stock, approximately?

The Witness: It has about 24 percent of the voting stock, and perhaps Mr. Wallace can answer the question.

Mr. Wallace: About 30 percent of the non voting stock.

The Witness: About 30 percent of the non voting stock, Mr. Referee.

The Referee: At one time it was about 90 percent of the voting stock?

The Witness: Yes.

The Referee: How much of the non-voting?

The Witness: Oh, let me see.

Probably about 30 percent of the non-voting.

The Referee: All right, Mr. Graubard, you may proceed.

By Mr. Graubard:

Q. Now, Mr. Purcell, reverting back to the time (3927) [fol. 2665] of the acquisition of I.D.S. control by Alleghany Corporation, can you tell the court when you first became interested in the affairs of I.D.S.?

A. I first heard of I.D.S. on November 11, 1948.

It happened to be a holiday, and that is why I remember the date.

Q. Did you at one time receive instructions from Allegheny Corporation to investigate I.D.S., for the purpose of determining whether a substantial investment would be made in I.D.S. by Allegheny Corporation?

A. Yes.

Q. When did that occur?

A. Later in November, 1948, I would say.

Q. Did you make what you then considered to be a thorough investigation of the I.D.S. holdings and business affairs?

A. As thorough as I could.

Q. What did that include?

A. It included a review of such published information as I could obtain, such as annual reports of the standard statistical services.

[fol. 2066] (3928) I found those to be rather meager, so Mr. Young and I decided that we should try to get some special reports prepared, and one was prepared by Mr. Stiver of Cleveland, and one was prepared by Mr. Shipman who, at that time, was my assistant; and they did a great deal of special review and study.

By that time we were in communication with the previous owner of the stock, Mr. Gamble.

He did not give us permission to interview officers of the Corporation, or get into the inner financial workings of the Corporation, because he did not want the rumor to get around that he was even willing to consider a sale; but he did give us financial statements at that time, which we were able to study.

Q. Did you, in the course of your investigation, interview any of the officials at the Securities and Exchange Commission in Washington?

A. No.

Q. Do you know whether certain of the representatives of Allegheny Corporation went to Washington for S.E.C. interviews?

Mr. Daly: When?

[fol. 2667] (3929) Q. Prior to the acquisition of the stock by Alleghany Corporation, during the year 1949.

A. It is possible that Mr. Shipman or Mr. Stiver went to Washington to look at files. I couldn't be sure about that.

I am quite sure, however, that no one went to Washington to discuss the prospective Alleghany purchase of the stock, prior to the actual purchase.

I realize that I am giving some testimony that is different from Mr. Young's testimony on this point, but my recollection differs from his, on that point.

Q. I might also add—and I say this without any desire to indicate that this witness is not testifying truthfully to the best of his ability—that there are some exhibits in this case which indicate that certain conversations took place; but since you have no present recollection or knowledge of these, Mr. Purcell, I will drop this line of inquiry.

A. I would be very, very much surprised, because I recall rather clearly that we discussed the question of whether we should go to the Securities and Exchange Commission prior to the purchase, and it was decided (3930) that we [fol. 2668] should not.

As I say, I would not say that Mr. Shipman or some one did not go down to talk about the company, or to study it; but I am quite sure that no one went down to the Securities and Exchange Commission and said, "We are considering buying this, and we want you to know about it."

I do not think we did that.

Mr. Daly: Mr. Graubard, instead of dropping this line of inquiry, I suggest that you show the documents to Mr. Purcell which you say would contradict his present testimony and his present recollection.

Mr. Graubard: I have already made a note of that, Mr. Daly.

In order not to delay the hearing this morning I have made a note to bring that up after the luncheon recess. I will locate that during the luncheon recess.

I also want you to know that if I am in error in regard to that, I will so acknowledge.

Mr. Daly: Just so that the record is straight.

[fol. 2669] (3931) By Mr. Graubard:

Q. Did you find, in the course of your inquiries concerning I.D.S., that the stock of this company was traded in over the counter?

A. Yes.

Q. Did you find where such stock was traded over the counter, in which communities?

A. I knew at least some of the places where it was traded.

Q. What were the principal markets for this stock, in 1949?

Mr. Daly: I object to that question.

The Referee: I will overrule the objection at this time.

A. I know that it was traded in Minneapolis; I know that it was traded in New York; and I know that it was traded in Cleveland—

Q. Were Minneapolis and New York the principal marts for this stock?

A. I think you would have to—

They may have been the most active, but I think you would also have to add Cleveland, Chicago, and (3932) [fol. 2670] probably one place on the West Coast.

There is quite a little stock out on the West Coast.

Q. Before acquiring the controlling stock from Mr. Gamble, did Alleghany Corporation purchase any stock?

A. Yes.

Q. Do you recall the price, approximately, at which the stock was purchased over-the-counter?

Mr. Daly: Which stock?

Mr. Graubard: The stock just referred to, acquired prior to obtaining control.

Mr. Daly: They may have acquired different types of stock. There are two types of stocks.

The Witness: Yes; of course.

By Mr. Graubard:

Q. I am not going into the matter more precisely, since we have exhibits on it, and I am simply asking for a general statement of recollection as to the prices paid not to Mr. Gamble but on over-the-counter acquisitions.

A. I think it was around five or six dollars (3933) a share. [fol. 2671] Q. Do you recall what price was paid to Mr. Gamble for his control of I.D.S.?

A. $20 a share.

Q. During that period of time that Mr. Gamble had control, and that Alleghany was acquiring some stock over-the-counter, do you recall whether there was any difference in price between the voting stock and the non-voting stock of I.D.S.?

A. In 1949?

Q. That is right.

A. Right at this time?

Q. Yes.

A. I do not think there was any substantial difference. Occasionally there have been differences.

I do recall that we bought one block of 10,000 shares of I.D.S. voting stock from an associate of Mr. Gamble—or at least a person who had some fairly close contacts with the company—at $10 a share.

Q. You were, at that time, Mr. Purcell, a director of Alleghany Corporation?

A. Yes; I was.

[fol. 2672] (3934) Q. Did the board of directors at that time determine to pay Mr. Gamble $20 a share because his shares represented control of I.D.S.?

A. I think so, yes; I think that is correct.

Q. At the time you made this purchase—

A. I might also say, Mr. Graubard, that that was the only place where a substantial block of stock could have been acquired in one piece.

He was the biggest stockholder.

But I would expect that the fact that it represented control, thereby giving us an opportunity to get in and make

the improvements that we felt we could make, had a bearing on it.

Q. At the time the purchase from Mr. Gamble was made, had you reported to the board of Alleghany Corporation that the control of I.D.S. would subject Alleghany Corporation to certain possible restrictions in its activities, under the provisions of the Investment Company Act?

I am referring now specifically to ability to sell or pledge voting stock.

A. No; I do not think so; not at that time.

[fol. 2673] (3935) This stock was so speculative, and it involved a relatively small amount of money, that at that time I do not think we were concerned with pledging stock.

Q. Were then aware of the fact that I.D.S. was subject to certain provisions of the Investment Company Act?

A. Yes.

Q. Were you familiar with the provisions of the Investment Company Act?

A. Reasonably so; not in complete detail.

Alleghany Corporation had ceased being an investment company long before, and, therefore, I had not had intimate contact with the Investment Company Act for several years.

Q. Were you aware, at the time you acquired control, of the definition of control, under the statute?

A. I think I probably was; I cannot be sure; I probably was.

Q. Obviously, Mr. Purcell, at the time you acquired control, notwithstanding these provisions of the Investment Company Act, or your then knowledge of these provisions, you recommended acquisition of control to the board of Alleghany Corporation.

[fol. 2674] (3936) Is that correct?

A. Yes; I did.

Q. At the time you recommended control, did you advise the members of the board of Alleghany Corporation that you yourself would like to acquire some stock of I.D.S.?

A. I do not think so.

Q. You made that determination only after Alleghany had been in control for some time.

Is that correct?

A. Yes; I would say so.

Q. To the best of your recollection, Mr. Purcell, when did you first make any statements to any officer or director of Alleghany Corporation that you would like to acquire some I.D.S. stock for yourself?

A. I should say in the summer of 1949, or late summer, after Alleghany Corporation had ceased acquiring any stock.

I would not even have given any thought to buying stock myself until Alleghany had terminated its purchases.

Q. At about what time did Alleghany Corporation terminate its purchases?

[fol. 2675] (3937) A. I do not know; I cannot remember.

Q. But you do recall that in August of 1949 you had discussions with Mr. Young, at least, concerning your acquisition of certain I.D.S. stock.

Is that right, Mr. Purcell?

A. Yes; that is right.

Q. You had been devoting yourself principally to a study of the affairs of I.D.S. for several months prior to August, 1949?

A. I would not say that.

I had been devoting myself principally to the affairs of the Chesapeake & Ohio Railway Company, of which I was vice president in charge of the law department, and that was my principal occupation at the time.

I was, therefore, devoting myself to I.D.S. on weekends and evenings and spare time activity, mostly.

Q. Would it be a correct statement, Mr. Purcell, that you and Mr. Shipman were the principal representatives of Alleghany Corporation, looking after the affairs of I.D.S., in 1949?

A. I think your previous question referred to (3938) [fol. 2676] prior to the purchase.

Q. No, I am referring just to 1949, Mr. Purcell, just to 1949.

A. We purchased the securities in April of 1949.

Q. That is right.

A. And I should say that it is correct that Mr. Shipman and I spent more time on I.D.S. than any other Alleghany officers or employees.

Mr. Daly: After its purchase.

The Witness: After the purchase, and—well, after the purchase.

Q. And a considerable portion of your time prior to the purchase, in 1949?

A. Mr. Shipman devoted more time than I did to it, really, because he was assigned to prepare that report. I had other duties.

I would not say, therefore, that I devoted most of my time to this.

Q. Between April and August of 1949, a period of nearly six months, did you devote most of your time to the affairs of I.D.S.?

A. No.

[fol. 2677] (3939) Q. Do you recall whether you visited the main offices of I.D.S., during that period of time?

A. I did, yes; probably several times.

Q. Would you estimate the number of times per month, Mr. Purcell, during this period?

A. Probably once or twice a month.

The Referee: (To Witness) In Minneapolis; is that right?

The Witness: In Minneapolis; that is right, Your Honor.

Q. Did you have practically daily telephonic communication with the officers of I.D.S., during this period of time?

A. I spoke to them frequently. I cannot say whether it was daily or—I would be quite sure that not a week would go by that I would not have some telephonic communication with some one in Minneapolis.

Q. Were you in constant communication with them by mail?

For example, did they send you reports?

A. Yes.

Q. Did they consult you in regard to major de- (3940) [fol. 2678] cisions to be made, after Alleghany took control?

A. Yes; they did.

Q. Were you the chief liaison officer of Alleghany Corporation with I.D.S., during that period of time?

A. I think that it would be fair to say that I was; yes; that is right.

Q. Did your activities in regard to I.D.S. increase or decrease, after August of 1949?

A. I should say that they increased.

Q. By August of 1949, Mr. Purcell, had you discovered that there were conditions existing in I.D.S. which were less favorable than you had anticipated at the time you made the purchase from Mr. Gamble?

A. I would say yes; I had learned that there were many problems in that company, which I had not been aware of before.

Q. Had you discovered any good factors or factors which then appeared to you to be good, of which you were unaware of at the time Alleghany Corporation purchased control from Mr. Gamble?

A. I do not know whether you would call it a (3941) good [fol. 2679] factor or not, but I did learn that I.D.S. had recently embarked upon a program of financing certain construction projects where there were some F.H.A. and V.A. mortgages; and that if those constructions programs worked out satisfactorily and the property sold that I.D.S. would probably receive some non-recurring profits from real estate operations, a phase of the business that I had not been particularly aware of prior to our purchase in April of 1949.

Q. During the period August to December, 1949, did you discover any unfavorable factors concerning I.D.S., of which you had been unaware up to that time?

A. Yes; I am sure that I did.

Q. What were those factors that you discovered, between August and December of 1949?

A. I cannot be positive whether these things came to my attention prior to August or subsequent to August; but during the months subsequent to our purchases I learned of a number of conditions, importantly involving the relationships of the company with the Securities and Exchange Commission, the State Security Commissions, and about the problems relative (3942) to the surplus account [fol. 2680] of the Corporation, matters of that character.

I could enumerate them in detail, if you care to have me do so.

Q. Aren't those the factors that you read in Mr. Young's testimony in this hearing?

A. Importantly so, yes.

Q. Did you prepare any data for Mr. Young in connection with his evidence on those points?

A. Yes, I did; and I handed you a copy this morning of what I prepared for him.

To fully answer your question, I would think that it would be much better to introduce that into evidence then let me try to repeat it from memory.

Q. Surely.

A. But I have no objection to giving it to you from memory, if you would like to have me do so.

Mr. Graubard: At Mr. Purcell's suggestion, I ask that a copy of a memorandum, undated, from Robert W. Purcell to Robert R. Young, consisting of five typewritten pages be received in evidence.

The Referee: Any objection?

[fol. 2681] (3943) Mr. Daly: No objection.

The Referee: There being no objection, it will be received in evidence and marked Objectants' Exhibit 453.

(Copy of memorandum above referred to, submitted by Mr. Graubard, entitled, "To: Mr. Robert R. Young—From: Robert W. Purcell," consisting of five pages, was received in evidence and marked Objectants' Exhibit 453, as of this date.)

The Referee: At this time we will take our usual luncheon recess to 1:30 p. m.

(Whereupon, at 12:10 p. m., a luncheon recess was taken to 1:30 p. m.)

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[fol. 2682]

(3944) Afternoon Session

(Whereupon, pursuant to the luncheon recess, the hearing was resumed at 1:30 p. m.)

The Referee: Let us proceed.

Gentlemen, we are, unfortunately, resuming this afternoon session on a sad note.

It has been called to my attention that one of our good friends, who has been in attendance every day since this hearing opened, sustained a heart attack on Tuesday night at his home.

I am referring to Mr. Bijur. He is at the St. Luke's Hospital.

He has had a cardiograph taken, and he is resting comfortably. Word has been received from his family that they hope he will receive a lot of rest and will not be bothered.

They appreciate your interest.

I have arranged to call frequently in order to find out his condition, and I will keep everyone else informed.

[fol. 2683] (3945) I suppose a friendly letter or a note of some kind going around would help to cheer Mr. Bijur up.

I understand that he is coming along in rather good shape.

Robert W. Purcell resumed and testified further as follows:

Direct examination (continued).

By Mr. Graubard:

Q. Mr. Purcell, before the luncheon recess the question was raised as to whether or not there had been any visits to the Securities and Exchange Commission by any representatives of Alleghany Corporation prior to the acquisition of the controlling stock by Alleghany Corporation.

Simply for the purpose of answering that inquiry, and for no other purpose, I point out that Objectants' Exhibit 322 indicates that Charles Shipman searched the S.E.C. files in Washington with regard to Alleghany Corporation.

This is set forth in a memorandum dated February 18, 1949.

[fol. 2684] (3946) Mr. Daly: Of course Mr. Purcell has already testified with respect to the possible visit of Mr. Shipman.

Mr. Graubard: I have a recollection of certain other visits to the S.E.C., but I do not think they are germane.

By Mr. Graubard:

Q. Now, Mr. Purcell, in regard to Objectants' Exhibit 453, I will ask you when, approximately, did you prepare this memorandum for Mr. Young?

A. I would say probably about two to three months ago.

It was preparatory to Mr. Young's testimony here.

Q. Did Mr. Young telephone you for this information, for this memorandum; did you meet him personally?

In other words, what was the occasion?

A. I would think that he probably telephoned me, I would think so.

Q. Did Mr. Young specifically ask you for a memorandum of all the unfavorable factors affecting a decision to purchase I.D.S. stock at the end of 1949 or the beginning of 1950, or words to that effect?

[fol. 2685] (3947) A. I am not sure that Mr. Young asked me for a memorandum.

We had two or three telephone conversations, and perhaps a meeting or two, reviewing, in person, some of these problems.

Now, whether he asked me to put those in memorandum form, or whether I suggested that that might be helpful to him, I do not know.

Q. Then this memorandum was prepared for the sole purpose of being of assistance to Mr. Young in the testimony that he was to present to this court?

A. That is correct.

Q. Did you have occasion at that time, Mr. Purcell, to discuss with Mr. Young the favorable considerations which affected the final determination of Mr. Young and Mr. Kirby to purchase stock of I.D.S.?

A. We talked over the entire situation, favorable and unfavorable.

Q. Could you please look at this exhibit—

A. I might say that I think that this exhibit was to set forth the problems that we encountered between the time of our purchase and the end of the (3948) year.

[fol. 2686] Q. Was any of the problems that you set forth in this memorandum ultimately resolved in such a way as adversely to affect the value of I.D.S.?

Mr. Daly: I object to the form of the question.

The Referee: It is not too clear. If the witness understands it, I will let him answer it.

Mr. Graubard: I will rephrase the question, if the witness prefers.

The Referee: (To Witness) Do you understand what Mr. Graubard is getting at?

If you do not, I will have him reframe the question.

The Witness: I wish he would rephrase it, because, in the way in which he put it, it is a little difficult to answer.

By Mr. Graubard:

Q. As you testified before, Mr. Purcell, there were a number of problems confronting I.D.S. as of the latter part of 1949, which you set forth in this mem- (3949) orandum. [fol. 2687] Is that correct?

A. That is correct.

Q. Ultimately, these problems were resolved, either favorably or unfavorably to I.D.S.

Is that correct? Would you please look at your memorandum and please tell us whether that is correct?

A. (Examining Objectants' Exhibit 453 in evidence) I think some of them still exist. I would have to review this memorandum, if I may.

Q. Take the first problem.

A. (Examining document.)

The Referee: Off the record.

(Discussion off the record.)

The Witness: The first question to which I referred in this memorandum revolved around the problem of the inadequacy of the reserves maintained by the company in connection with its certificate liabilities.

That breaks down into two problems:

One, that the company was not accruing reserves on a monthly basis, but only on an annual (3950) basis.

[fol. 2688] Consequently, a certificate, for instance, which had its anniversary date on June 30th would accrue a year's reserves on June 30th; but on December 31st next following no further reserves had been accrued, despite the fact that the company was nearer to the maturity of that certificate by six months.

Of course, having certificates maturing throughout the year, there was an average of six months' delay in accruals.

The Securities and Exchange Commission insisted that that was improper accounting procedure, and the company's own accountants and auditors agreed with the Securities and Exchange Commission in that respect; and yet the company did not have enough capital and surplus to increase its accruals for certificate reserves at that time to put the company on an accrual basis.

It was our first objective to remedy the accounting deficiency out of earning, when (3951) we could.

[fol. 2689] I think there was about a two and a half million dollar deficiency at that time, and it took us until the middle of 1950 to remedy that particular deficiency.

The other question—

Mr. Pomerantz: Pardon me.

By "that time" you mean when?

The Witness: Or the middle of 1950; as I recall it, I think it was the middle of 1950.

Mr. Pomerantz: Thank you.

The Witness: The other question was the question of the rate of accrual.

Now, speaking in non-technical language, if I can, I say that the accrual of these certificate reserves is the amount

of liability which the Corporation shows on its balance sheets which, if that liability earned interest at a certain rate until the maturity of the certificate, the company would be able to pay off all of its liabilities.

The Investment Company Act of 1940 and the staff of the Securities and Exchange Com- (3962) mission agreed that [fol. 2690] a three and a half percent rate was the proper rate for which accruals should be made.

Consequently, there had to be a large enough liability shown on the balance sheet so that if it earned at the rate of three and a half percent per year until maturity of all the certificates, they would all be paid out.

Actually, the company was accruing its reserves at the rate of something over four and a half percent, and, consequently, because it used that higher rate, it did not have to show as large a liability on the balance sheet.

I will put it this way: the amount by which the liabilities would have had to be increased in 1949, if we had gone from the four and a half percent rate to the three and a half percent rate, was 17 or 18 million dollars.

The people on the staff of the Commission wanted I.D.S. to show those liabilities. I.D.S. was very much concerned —and we were all concerned—that if we had had to show those liabilities we did not have enough assets on the (3953) [fol. 2691] balance sheet to outweigh them, and, consequently, we would have shown a deficiency or a deficit in our capital account of some 18 or 20 million dollars.

Now, that was a matter of very great concern to all of us, during 1949, 1950, and 1951, and until those deficits were remedied; and that is the condition that we faced at that time.

Now, to state that the problem was resolved in our favor or in somebody's else's favor, pro or con, is a little difficult. We never changed the views of the people at the Securities and Exchange Commission about the correctness of a certain accounting procedure which they insisted was right.

We did, however, fight a delaying action for a few years, and by persuading them that if they would give us a little time and a little opportunity to turn around we hoped that we would be able to take care of it.

In 1949, however, I must say that they had not agreed to give us that time, they kept us (3954) very much upset [fol. 2692] throughout 1950 and 1951, as a matter of fact, on those particular points.

The Referee: (To Witness) During 1949, 1950 and 1951, what system of accounting did you use in making up these balance sheets and yearly statements for I.D.S., to keep from showing a loss of some 17 or 18 million dollars?

The Witness: We accrued liabilities on the balance sheet —well, we only showed on the balance sheet the cash surrender values of the certificates as they matured, and as those cash surrender values increased at each anniversary date of the particular certificates.

Now, that was basically it.

I notice from Mr. Young's testimony, which I read over the weekend, that he described certain accounting abilities to me, which I do not believe I have. I am not an acountant, Mr. Referee.

The cash surrender values were basic liabilities which the accountants put on the books.

The Referee: You feel that that was a fair method of stating your financial position?

The Witness: No; I do not.

[fol. 2693] (3955) The Referee: You do not?

The Witness: No; I do not.

The Referee: You take the opposite view and state that that was an unfair way of stating your financial position at that time, remembering at all times that you were dealing with this problem that you were hoping to eliminate?

The Witness: That is correct, Mr. Referee.

I felt that that was not a conservative method of accounting, because that was a method of accounting which assumed that the certificates were going to be surrendered for cash prior to their maturity; and there were certain sacrifices which certificate holders had to take, which they had to take prior to carrying out their obligations under such certificates, carrying their program through to maturity.

I felt, therefore, that these accruals should be made monthly rather than annually.

The Referee: To the average layman such as myself, however, you would not be giving a fair picture of the [fol. 2694] financial condition of the (3956) company, unless I had some other knowledge together with what you set forth in the annual financial statement; is that right?

The Witness: If you read all of the balance sheet and all of the fine footnotes there, and you had the accountant's terminology about these accruals—

The Referee: Which most of us do not have.

The Witness: Which most of us do not have; that is right.

It took me quite a while to learn that.

But, of course, you would find it all in there.

But the balance sheet itself, ex the footnotes, was, I felt, lacking, and the auditors felt that way, too, and qualified their certificate accordingly.

By Mr. Graubard:

Q. Mr. Purcell, did you mean to say that the rate of accruing these reserves by I.D.S. in 1949 was subject to the proper rates set forth by the Investment Company Act?

[fol. 2695] (3957) A. I did not mean to say that.

I said that the staff of the Securities and Exchange Commission agreed with the Act, but the Act applies only to companies isuing certificates; and that is what took I.D.S. out of the business of isuing certificates, in 1940.

Subsequent to that time, subsequent to the enactment of the law, I.D.S., being no longer able to issue certificates—because at that time its reserve account, if it had complied with the Act, would have been, oh, maybe $75,000,000 under water.

I.D.S. had to form a wholly owned subsidiary called Investors Syndicate of America, which issued certificates thereafter, and the new certificates which were issued subsequent to 1940 carried such a low yield to the investors, and, therefore, such a low cost to the company that issued them, that it could take its assets and still place a liability on the balance sheet, which would accrue interest or increase its certificate increment by three and a half percent, and meet its obligations at maturity.

Q. And now, Mr. Purcell, in this paragraph (3958) num-
[fol. 2696] ber one on page 1 of this memorandum there is the sentence:

> "I was not aware, however, of the fact that important and influential members of the staff of the S.E.C. were at the time very insistent that the method of bookkeeping be changed."

Do you see that in the middle of the paragraph, paragraph number one, Mr. Purcell?

A. Yes; I do.

Q. Isn't that the only thing referred to in paragraph one, which was new to you after you took control, as contained in paragraph one?

In other words, Mr. Purcell, didn't you know, at the time you took control, about everything that the footnotes to the annual reports showed, in the auditors' statements?

A. (Examining Objectants' Exhibit 453 in evidence.)

Q. May I suggest that you re-read the paragraph, Mr. Purcell.

A. (Examining Objectants' Exhibit 453 in evidence) Yes, I knew of this question of the rate of accrual, (3959) cer-
[fol. 2697] tainly three and a half percent versus 4.55, whatever that was.

I cannot at this point, without perhaps referring to one of those balance sheets, say that I knew about the current accrual problem.

The important aspect of the question is, as you stated, that I did not realize that there was still a question up with members of the staff as to their of maintaining their balance sheets.

Q. Thank you.

And that issue itself was ultimately resolved favorably to the company, in that by the time you issued your 1949 annual statement the Securities and Exchange Commission had withdrawn its insistence.

Is that correct?

Mr. Daly: I object to the form of the question.

The Referee: Objection overruled.

A. I will say this: the Securities and Exchange Commission did not require us to change our method for our 1949 annual report.

That report, however, was delayed until the middle [fol. 2698] (3960) of 1950, until we could resolve that question with the Securities and Exchange Commission, and only then did they allow us to issue the balance sheet with the footnotes that are set forth there.

I myself was in Washington a number of times on that question.

Q. Now, Mr. Purcell, in regard to paragraph 2 on page 2 of this memorandum, you refer to the difficulties in registering I.D.S. stock with the Securities and Exchange Commission for purposes of sale to the public.

Is that right?

A. Yes.

Q. Has I.D.S. since 1949 ever offered stock to the public?

A. It has not.

Q. Has it ever registered with the S.E.C.?

A. It has not.

Those difficulties still remain.

Q. In regard to paragraph three, Mr. Purcell, which refers to the assertion by the S.E.C. of the legal proposition that Mr. Gamble, as seller of the (3961) controlling [fol. 2699] interest in I.D.S. should turn over his profit to the investment trusts for the benefit of their shareholders, can you tell us what occurred in regard to this problem, and how and when it was resolved?

A. The members of the staff of the Securities and Exchange Commission took the position, in 1949, that Mr. Gamble owed his profits—or at least a substantial portion of them—to the shareholders of the three open-end investment trusts—

Mr. Daly: (To Witness) The profits on what, Mr. Purcell?

The Witness: On his sale to Alleghany Corporation, of the controlling interest in I.D.S.

A. (Continuing) —to the shareholders of the three open-end trusts managed by I.D.S., the legal theory being that

in as much as those management contracts are in effect personal, that they may not be bartered away and sold, and they were valuable contracts, and to the extent that the value of those contracts was reflected in the transfer of control, that portion of the value had to be turned over to the trusts.

[fol. 2700] (3962) The Securities and Exchange Commission persisted in that point of view and informally asked me on two or three occasions—or more—after a good many conferences, to bring an action against Gamble for those profits.

Finally—and I cannot tell you when, but I have turned the copies of the letters over to you—I wrote a letter to the Securities and Exchange Commission on behalf of each of the trusts—so that there were three letters—and I said, in substance, that we had reviewed the matter with our counsel —that we had given consideration to the collectibility or uncollectibility of an item of this character, had thought of the public relations aspects of it, and had decided that it would not be in the best interests of the trusts to bring such an action.

However, if the Securities and Exchange Commission felt that we should, would they please notify me and we would forthwith employ counsel to do so.

I never got an answer to any of those three letters. As far as I know, it is either unresolved or else the passage of time has eliminated the question.

[fol. 2701] (3963) However, the views of the staff of the Commission—and I am sure of the Commission itself—with reference to the accountability of the person selling the control of I.D.S. to shareholders of the funds, remain unchanged.

Q. Isn't that the problem which was discussed—if you do not know, just say so—in connection with the proposed sale of control of I.D.S. in 1954 by Alleghany Corporation to the Murchisons?

A. The same question, that is corect.

Q. Were you consulted in connection with that?

A. Yes; I was.

Q. Was that a fact which led to the exchange of voting for non-voting stock?

A. I would not know about that.

Q. Do you know whether it was one of the factors that led to a change in the form of the transaction?

A. I think that the exchange of 130,000 shares, approximately, of non-voting for voting stock, was always a part of the transaction.

As far as I know, I do not think there ever was any change in that.

[fol. 2702] (3964) I wasn't part of the discussions, but I never heard of any proposal that did not contemplate that.

I will put it that way: I never heard of any proposal that did not contemplate that.

Q. By the way, Mr. Purcell, in regard to the points that we have covered thus far, were there any rulings by the Securities and Exchange Commission in regard to these changes as distinct from requests for information or requests for conferences by members of the staff of the Securities and Exchange Commission?

A. (Examining Objectants' Exhibit 453 in evidence.)

Q. There may have been statements of staff position.

Were there any rulings by the Commission itself?

A. (Examining Objectants' Exhibit 453 in evidence) Not that I know of, although the staff was very positive about it, and unanimous, I might say.

Q. In regard to paragraph 4 on page 3, relating to the issues raised by a subcommittee of the National Association of Security Administrators, were those (3965) issues re-

[fol. 2703] solved favorable to I.D.S.

A. I must say that the subcommittee apparently was satisfied because they did not make any report to the national body that was adverse to I.D.S.

Q. In regard to paragraph 5 on page 3, relating to the sale of mortgages at a premium, did this problem ultimately have an adverse effect upon I.D.S.?

A. Oh, yes, it did.

Q. To what extent?

A. We had taken into the income account in 1949 nearly

a half million dollars, which had to be reversed eventually, and additional sums were taken into the income account in 1950.

The problem there, Your Honor, was that the parent company was selling to its subsidiary mortgages which the parent company bought at 100 and immediately turned over to the subsidiary at 101 and a half; and it would take that one and a half points into its income account; but the subsidiary would capitalize those one and a half points and write them off over a ten-year period.

So to that extent there was, as far as I was (3966) con- [fol. 2704] cerned, an artificial boosting of the consolidated income account, and we get new auditors in in 1950; but I believe it was, however, in 1951, that they said, "We think that that is an incorrect method of keeping your intercompany accounts"; and recently the parent company has actually been refunding in cash the premiums which it charged to the subsidiary.

Q. These premiums were refunded then, Mr. Purcell, were they not?

A. We not only are refunding them, but we also wrote out of our income account that income.

Q. But this affects the wholly owned subsidiary, does it not?

A. That's right.

Q. This is a bookkeeping transaction, as I think you stated here?

A. Yes; but that approximately half million dollars that we took into our income account and which, accordingly, went to surplus and reserves in 1949, had to be eliminated in 1951, and the additional amounts which had been taken in in 1948, and, also, in 1950, had to be eliminated.

[fol. 2705] (3967) Mr. Pomerantz: If I may, Mr. Graubard.

(To Witness) In other words, Mr. Witness, the earnings, as stated by I.D.S., in 1949 and 1950, were overstated by these amounts?

The Witness: That is correct; and to the extent that it went into our surplus account it eventually had to be taken out.

Mr. Graubard: I do not think that is so, sir.

The Referee: (To Witness) There was nothing to justify the sale of these mortgages to the subsidiary at a point and a half above par, was there?

The Witness: Originally, Your Honor, the Securities and Exchange Commission had authorized the sale at a one and a half point premium, that being the theoretical cost of acquisition of these mortgages.

There was a time, shortly after the war, when the demand for mortgages was very heavy, and if you were to go out on the market you frequently would have to pay a point or a point and a half premium; and, consequently, [fol. 2706] the market (3968) price of these V.A. and F.H.A. mortgages was 101, 101 and ½, if you went into the market to buy them.

So the fact of the charge, the inter-company charge, I think—originally at least—was perfectly justifiable.

The question is a different one, however, in that was it justifiable to take that one and a half points into the parent company's income account without also charging it as an expense on the books of the subsidiary, when you were issuing to your security holders a consolidated balance sheet and income account at year end.

By Mr. Graubard:

Q. You were charging it to the subsidiary, however, by way of allocating the cost of that premium over the life of the mortgage.

Is that correct, Mr. Purcell?

A. That is right.

So they would write off from their income account ten percent of it a year; whereas the parent company was taking 100 percent of it into its income account.

Q. That is right.

[fol. 2707] (3969) Now, when you consider I.D.S. and its subsidiary, or subsidiaries, as a unit, were you out any money by changing this bookkeeping method?

A. This had nothing to do with cash, but it does have to do, importantly, with the income account.

Both companies were on an accrual accounting basis, not cash.

Q. To the extent that these items were reversed, did they not increase the book value of the parent company?

A. No; it reduced it.

Q. I am thinking now of the consolidated report.

A. It redueed it.

Q. They reduced it by taking your premium completely off that year, instead of including it.

Is that correct, Mr. Purcell, to that extent?

Mr. Daly: (To Witness) Do you understand the question, Mr. Purcell?

The Witness: I am not sure that I do.

I guess I will have to have that read.

The Referee: Read it.

(Whereupon, the pending question was read (3970) by [fol. 2708] the reporter, as recorded.)

The Witness: Will you please repeat the question or rephrase it for me.

Mr. Graubard: All right, I will.

By Mr. Graubard:

Q. Certainly to the extent that you refunded these premiums to the subsidiary of I.D.S., that increased the value or the net worth of the subsidiary.

Is that correct, Mr. Purcell?

A. I would have to go into a further explanation.

The only refunds—

Q. Perhaps we can eliminate this further.

Let me ask you this—

A. No, I think I—

Q. Perhaps this will take care of this very shortly—

Mr. Daly: No, I would like to have the question answered.

Q. How serious do you regard this problem, when you first encountered it?

Mr. Daly: I would like to have an answer to the previous question.

[fol. 2709] (3971) The Referee: You will get one.

The Witness: Which one shall I answer first, Your Honor?

The Referee: The first one.

The Witness: The cash refunds that we have made to the subsidiary are only to reimburse it for premiums which it paid to the parent company on mortgages which it subsequently resold to others; and most of those mortgages have been resold at less than the subsidiary paid for them.

To the extent of the unamortized premium on the mortgages, the parent company has reimbursed the subsidiary in cash.

We have not reimbursed the subsidiary for the premium unamortized on mortgages which the subsidiary still owns.

We have simply conformed the parent company's accounting practice with that of the subsidiary, so that the parent company has not taken into its income account the premiums which it received from the subsidiary, any more rapidly than the subsidiary has written those premiums off; [fol. 2710] and (3972) that required the reversal, bookkeeping-wise, of a substantial amount of income which had appeared in 1949 and 1950, but which the auditors later made us reverse; and that income, of course, which had come into the books in 1949 and 1950 had ultimately found its way into surplus.

What we actually did, if my recollection is correct, is that in 1951 we reduced our income, and hence the amount that we could transfer into reserves, by the amount of this over accrual.

The Referee: (To Witness) I will now ask you this very simple question, Mr. Purcell:

Did all that result in good or bad to the parent company, a gain or loss?

The Witness: Your Honor, there wasn't any cash involved at all; so that it did not make the company richer or poorer, by any money, except to the extent that we paid our wholly owned subsidiary some money.

But the income, which is on an accrual (3973) basis in [fol. 2711] these companies, as well as also are the expenses had been inflated by that amount, which later had to be reversed.

By Mr. Graubard:

Q. You knew that the income had been so inflated, by December of 1949?

A. Yes; I think I learned in 1949 that that as the accounting treatment, and that everybody had his fingers crossed about it; and the auditors at that time did not insist that it be treated differently, but the new auditors did.

Q. Do you remember when you learned of that?

A. Oh, I couldn't say as to that.

Q. When did you get new auditors in?

A. In 1950, for the 1950 audit; but they did not really puruse this point—if my recollection is correct—until 1951.

Q. So that in 1949, with the old auditors, you did not have the auditors insisting upon a change in this procedure.

Is that correct, Mr. Purcell?

A. I think that is correct.

[fol. 2712] (3974) Q. So that that was not a serious problem to you in 1949?

A. It was not a problem from the standpoint of the insistence of the auditors, it was only a problem of whether the company was earning what it appeared to be earning.

I mean, it was, after all, a serious matter, because we were selling, probably, oh, 40 or 50 million dollars of mortgages to our subsidiary.

Now, we could have written up our income account by selling those mortgages at 105, and made ourselves look awfully good, and the subsidiary would have only had to capitalize that and write it off over a ten-year period.

So that as a matter of principle the company was lifting itself up by its own bootstraps from the standpoint of its income account in 1949, and, of course, that had happened in 1948, too.

Mr. Pomerantz: If Your Honor will permit just one thing that may help—

Mr. Graubard: You may ask this later on, Mr. Pomerantz—

[fol. 2713] (3975) Mr. Pomerantz: I was not going to ask, I was going to make a statement.

Mr. Graubard: I would rather you did it on redirect. I would like to get along with this witness.

By Mr. Graubard:

Q. Neither in 1949, nor in 1950, Mr. Purcell, did the board of I.D.S. regard this erroneous bookkeeping system so seriously as to change it during these years.

Is that correct?

A. Let me say this: that during those years here was a corporation with four or five hundred million dollars of liabilities, and on its balance sheet no surplus than a million two hundred thousand odd of capital.

It could not afford to reverse any of its accounting procedures in such a manner as to jeopardize that infinitesimal small capital account to the point where a deficit would appear, because once a deficit appears the corporation would appear to be insolvent, and the various State Security [fol. 2714] Administrators would (3976) have put it out of business.

It was a struggle to keep the company alive, during those years.

Q. You are not implying, are you, Mr. Purcell, that this erroneous bookkeeping method was so serious that by failing to change it you were presenting the public and investors with a financial report which was materially erroneous?

Mr. Daly: I object to the question.

The Referee: Objection overruled.

The witness may answer it.

The Witness: Would you read the question again, please.

The Referee: Read it.

(Whereupon, the pending question was read by the reporter, as recorded.)

A. First, let me say that this company was not issuing any securities which were being purchased by the public—that is, I.D.S.—at that time.

Secondly, the footnotes to the balance sheet did point out this problem, at December 31, 1949.

[fol. 2715] (3977) Q. You knew this problem when you recommended the purchase of this company; did you not?

A. I do not believe I did; I do not believe I did.

Mr. Pomerantz: The 1948 report does not refer to that same footnote or that problem?

The Witness: It does not.

I would have to look at the 1948 report, but it is my clear recollection now that I did not know of this at the time.

By Mr. Graubard:

Q. Will you point out the footnote, Mr. Purcell, please.

A. Footnote 11.

Mr. McFadden: It is in the 1949 report of Investors Diversified Services, Inc.

Mr. Pomerantz: Plaintiffs' Exhibit 38 in evidence.

By Mr. Graubard:

Q. I direct your attention to footnote 11 on Plaintiffs' Exhibit 38 in evidence, on page 12, and ask you whether you can determine by this footnote (3978) how much was in-[fol. 2716] volved in this erroneous bookkeeping transaction?

A. (Examining Plaintiffs' Exhibit 38 in evidence.)

Mr. Pomerantz: Mr. Graubard, if you will turn back to the text at page 6, to which the footnote refers, you will see an item reading:

"Premiums on mortgages sold: —to subsidiary companies—$447,537.61."

Obviously that is the amount to which the footnote refers.

Mr. Graubard: The last two sentences of the footnote say, Your Honor:

"The amount of premiums capitalized by the subsidiary at December 31, 1949, which were applicable to 1949 purchases, aggregated $383,211.20. It was impracticable to determine the amount of inter-company profit, if any, included therein."

By Mr. Graubard:

Q. What we are largely referring to, Mr. (3979) Pur- [fol. 2717] cell, are the premiums, is that correct, or is it the profit?

A. Both.

Q. Both?

A. That is right.

Q. You can say that the profit in this premium situation is somewhat less than the total of $383,211.20, can you not?

A. (Examining Plaintiffs' Exhibit 38 in evidence) I do not think so. I think that is an error, because—I mean that I think that your statement is not correct.

The balance sheet shows that the parent company received, in 1948—

Mr. Pomerantz: (To Witness) You do not mean balance sheet—

A. (Continuing) The income account of the parent company shows that it received premiums on mortgages sold to subsidiary companies in 1948, 563,000 some odd dollars, and in 1949 447,000 some odd dollars.

Now, when the subsidiary company received these mortgages and capitalized those premiums, it immediately [fol. 2718] (3980) commenced to write off those premiums at the rate of ten percent a year.

So that the $383,000 some odd figure appearing in footnote 11 as the amount of premiums capitalized, which were applicable to 1949 purchases, would have, in my opinion, included—and did include—the ten percent write down which it took for that year with respect to mortgages acquired that year and, possibly, with respect to mortgages acquired in prior years.

Mr. Pomerantz: (To Witness) When you say, "would have included," Mr. Purcell, you mean would have given effect to?

The Witness: Would have given effect to, yes; that is right.

Q. Do you agree or disagree with the last sentence of footnote 11:

"It was impracticable to determine the amount of intercompany profit, if any, included therein"?

A. (Examining Plaintiffs' Exhibit 38 in evidence) I confess to say that I am confused by (3981) that sentence [fol. 2719] right now.

Q. I confess to say, Mr. Purcell, that I, too, am confused by that.

Mr. Pomerantz: I would be very happy to unconfuse you, if you want to hear the answer.

Mr. Graubard: In due course, Mr. Pomerantz.

Mr. Pomerantz: All right, I will await my turn. It is very clear to me.

Mr. Graubard: I will ask the court to take judicial recognition of the fact that, possibly, Mr. Purcell's knowledge, and even mine, with respect to reading financial statements, may be superior to that of the average member of the public.

The Witness: The amount of premiums collected on sales of mortgages to subsidiary companies clearly appears on page 6 of the annual report for 1949.

By Mr. Graubard:

Q. In any event, Mr. Purcell, you knew at the time that this problem originated that a change in the bookkeeping system would not adversely affect the (3982) real assets of [fol. 2720] I.D.S. in any respect?

Mr. Daly: I object to that. That is not the point involved.

The Referee: Objection overruled.

A. It did not take dollars out of the system or put dollars into the system; but it had a very important effect on the net worth as shown on the books, and the earning capacity of the Corporations, as shown on the books.

Q. Mr. Purcell, you knew—and, may I ask, did Mr. Young know—that this change in the bookkeeping system would not adversely affect the real net assets of I.D.S., in any respect?

Mr. Daly: I object to that.

The Referee: Objection overruled.

A. I think I answered that.

Mr. Daly: We went over this a dozen times, Your Honor.

The Referee: I have overruled your objection, Mr. Daly.

Q. And in so putting the question—

The Referee: Wait a minute; you have an (3983) open [fol. 2721] question. Let us get an answer, otherwise you will get even more involved.

The Witness: I will state again that it did not involve dollars coming into the corporate group or coming out of the corporate group; but it had a very important bearing on the balance sheet and income accounts, as to whether those statements correctly reflected the financial condition of the Corporation.

The books and records of both corporations were kept on an accrual basis, and we were accruing income to the parent company and not setting forth on the books of the subsidiary a contra-expense item in the same transaction.

By Mr. Graubard:

Q. By making the bookkeeping change, Mr. Purcell, and reflecting that change clearly in the income statement of the Corporation, any person interested in buying any stock on the open market would be able to determine for himself that the income was reduced correspondingly to the extent of these premiums.

Is that correct?

[fol. 2722] (3984) Mr. Daly: When?

Mr. Graubard: Whenever it was published, in that year.

A. I guess I cannot answer that question.

I am sorry, but I do not understand it.

I would be glad to answer it if you would rephrase it, or have the stenographer re-read it to me.

I am not ducking the question, Mr. Graubard.

Q. I understand. We will dispense with that. We will go on with paragraph 6.

Paragraph 6 apparently refers to qualifications for investments made by I.D.S. under the laws of Minnesota.

Was the issue raised by the Minnesota Banking Commissioner as set forth in this paragraph, ultimately resolved in favor of I.D.S.?

A. It has never been resolved.

Q. Was the issue raised by the Banking Commissioner pressed to the point where I.D.S. changed its investments?

A. I think it changed its investment policy, yes.

Q. To what extent, and when?

[fol. 2723] (3985) A. During the years 1949, 1950 and 1951, I.D.S. was making loans on business and commercial real estate property—

Q. May I interrupt you, Mr. Purcell.

We are familiar with the general background of this because it is in the exhibit.

I refer you to the last sentence of your own paragraph in which you set forth that if the Banking Commissioner had persisted in his views the view company would have been in serious default and open to a petition for receivership, et cetera.

A. That is correct.

Q. Now, did he persist in his views?

A. Yes, sir.

Q. Did the company go into receivership?

A. No.

Eventually, by eliminating a number of the criticized items in the portfolio, and ultimately by agreeing with him that he need only consider these mortgages to the extent of 66 and ⅔ percent of the appraised value, we removed the danger; but that did not take place until the summer of 1953.

[fol. 2724] (3986) Q. In the meantime, Mr. Purcell, I.D.S. was never pressed by him to the point where the company was in serious default.

Is that correct?

A. His reports always said that we were in default; but we got over the hurdle, you might say.

Q. Did he stop you from doing any business in Minnesota?

A. No; he did not.

Q. We will now go to paragraph 7.

This paragraph apparently refers to a memorandum which is not attached.

Did the inquiry made by the staff of the Securities and Exchange Commission ever result in the adoption of an order by the Commission?

A. No.

I might say, however, that the memorandum which you say is not attached is introduced in evidence here, I believe.

Q. It may very well be. I just do not recall it.

But there was no order issued by the Commission (3987) [fol. 2725] adverse to I.D.S., in regard to this matter, was there?

A. No. It was proposed, prepared, but we prevailed upon the Commission not to issue it.

Q. When did you commence your own purchases of stock in I.D.S., Mr. Purcell?

Mr. Graubard: Off the record, please.

The Referee: Off the record.

(Discussion off the record.)

The Referee: Back on the record.

A. (Examining ledger page) On October 1, 1949, according to my books.

Q. Mr. Purcell, when did you commence purchasing I.D.S. common stock for your own account?

A. (Examining ledger page) According to my books, I commenced purchasing on October 1, 1949.

Q. You have seen Deefndants' Exhibit 422 in evidence?

A. May I see it?

(Whereupon, Mr. Graubard handed a document to the witness, which the witness examined.)

Mr. Daly: You mean Class A or voting stock?

[fol. 2726] (3988) Mr. Graubard: I will refer to that in a moment.

A. I have.

Q. Will you review that and tell the court whether that is a correct summary of your purchases of Class A common stock of I.D.S., in 1949 and 1950?

Mr. Daly: Up to February 10, 1950; that is the date in the Exhibit, the last date in the exhibit.

The Witness: That is correct; up to February 10, 1950.

Q. And subsequent to February 10, 1950, Mr. Purcell, did you purchase any additional stock of I.D.S., during 1950?

A. Yes; I did.

Q. When did you make such purchases, and in what amounts?

A. Well, in May I bought 12,732 shares from Mr. Young and Mr. Kirby.

Q. Yes; were there any further purchases?

A. My books indicate that that purchase was made (3989) [fol. 2727] on May 3rd, although I seem to recall that it was actually made some time a few days thereafter.

The Referee: (To witness) In 1951?

The Witness: In 1950.

The reason I say that that is so is because May 3rd was the date of the Alleghany Corporation stockholders' meeting, and I did not consummate the purchase from Mr. Young and Mr. Kirby until a few days after.

Q. Did you make any subsequent purchases of I.D.S. stock, either voting or Class A?

A. Yes; I did.

Q. When, and in what amounts?

Mr. Pomerantz: May I inquire of Mr. Graubard, through Your Honor, for what purpose all this detail is going into evidence?

The Referee: Do you want to tell him, Mr. Graubard?

Mr. Pomerantz: I would just like to be able to follow the evidence, and I must confess that I am lost at this point.

Mr. Graubard: Frankly, I am concerned with (3990) giv- [fol. 2728] ing him a courtesy which I myself never received.

Mr. Pomerantz: I will withdraw my request.

The Referee: You know, Mr. Graubard, it is better to give than to receive.

Mr. Graubard: Very well, sir.

I myself do not know what Mr. Purcell's purchases were, or his holdings are, but I think that the purchases of the man who was closest of all the Alleghany officials to the I.D.S. picture may throw some illumination on the situation affecting I.D.S. from time to time, not merely at the time of 1950 transaction, but thereafter.

Thus—if more detail were required—if Mr. Purcell made additional purchases in the next several months after May 3, 1950, for himself, it would indicate that there was a continuity in the operations of I.D.S. of such a nature, commencing with the time of his first purchase and thereafter, so as to make him very optimistic about the future, and it may be that we can relate those items.

[fol. 2729] (3991) Further, it may very well—and I do not know what the answers to these questions will be—that Mr. Purcell's own activities with regard to I.D.S. stock will be helpful with respect to determining the propriety of the actions of Alleghany Corporation in making sales of the stock thereafter.

Is that helpful, Mr. Pomerantz?

The Referee: Proceed to your next question, Mr. Graubard.

Mr. Pomerantz: I am afraid I am really in the dark now.

Mr. Graubard: We will endeavor to shed light.

Mr. Pomerantz: Thank you, nevertheless, for your explanation.

By. Mr. Graubard:

Q. Mr. Purcell, when were your future transactions in acquiring I.D.S. stock, and in what amounts?

A. On May 27, 1950, I bought 1242 shares.

Q. On May 27, 1950, you bought how many shares, Mr. Purcell?

A. 1242.

[fol. 2730] (3992) Q. 1242 shares of Class A?

A. That is right.

On May 31st I bought—

Q. Excuse me.

Did you buy those over the counter?

A. Yes.

Mr. Graubard: I will make one suggestion, in the interests of brevity.

I do not know what Mr. Purcell has on these sheets, and it may be that it will not be helpful to me at all.

If it is agreeable to the court and to Mr. Purcell, I will look at the summary that he has and either ask him to continue or not.

The Referee: (To Witness) There are quite a few more more items?

The Witness: There is quite a list here.

Q. It is up to you, Mr. Purcell.

Mr. Daly: (To Witness) Go ahead; give them all to him.

The Witness: Shall I put them in the record?

Mr. Daly: Yes.

[fol. 2731] (3993) The Witness: It does not make any difference whether or not anyone looks at the sheet.

The Referee: Mr. Graubard is making the suggestion merely in the interest of saving time.

Show him the sheet, if you want to.

The Witness: All right, Your Honor.

(Whereupon, the witness handed a ledger page to Mr. Graubard.)

The Referee: Off the record.

(Discussion off the record.)

The Referee: Back on the record.

Mr. Graubard: I think that it would be only fair to show in the record that Mr. Purcell has made available to counsel, both for objectants and proponents, a bookkeeping sheet showing his transactions in I.D.S. stock; that as a result of

having looked at such sheet I am going to request Mr. Purcell to read into the record only those transactions concerning the year 1950; and I am going to ask Mr. Purcell to give the date of his purchases, the number of shares purchased, and the price paid per share.

[fol. 2732] (3994) The Witness: May 27, 1950, 1,242 shares at $13.63 per share.

May 31, 1950, 4 shares at $13.63 per share.

November 3, 1950, 200 shares at $20 per share.

November 6, 1950, 203 shares at $22.50 per share.

November 6, 1950, 500 shares at $23 a share.

November 22, 1950, 595 shares at $22.75 a share.

December 19, 1950, 557 shares at $26.50 per share.

January 3, 1951, 44 shares at $31 per share.

April 24, 1952, 45 shares at $52 a share.

The Referee: At this time we will take a short recess.

(Short recess.)

The Referee: Let us proceed.

By Mr. Graubard:

Q. Were all of those purchases made by you in the open market, Mr. Purcell?

A. They were.

[fol. 2733] (3995) Mr. Daly: Other than the—

The Witness: Other than the one that I specifically mentioned as having been a purchase from Mr. Young and Mr. Kirby.

The Referee: (To Witness) That was the large one?

The Witness: Yes, sir; that was the large one.

Q. That was the purchase of 12,000 shares?

A. That is right.

Q. Do your records tell you whether or not these purchases were made in New York, Chicago, Minneapolis, or elsewhere?

A. They do not.

Q. Would you recall where these purchases were made?

A. I do not now know.

Q. I show you, Mr. Purcell, a document entitled "Agreement for Purchase of Securities Between Robert W. Purcell and Alleghany Corporation," consisting of four typewritten pages, which I have taken from the file which you showed me today, and ask you whether (3996) this is a true copy [fol. 2734] of an agreement entered into on or about January 20, 1950 (handing document to the witness)?

A. (Examining same) It appears to be.

I haven't made a personal comparison, but I am confident that it is.

Q. Was this agreement authorized or ratified by the board of directors of Alleghany Corporation?

A. Yes, sir.

Mr. Graubard: I ask that it be marked in evidence.

The Referee: Any objection?

Mr. Daly: No objection.

The Referee: It will be received in evidence and marked Objectants' Exhibit 454.

(Document above referred to, submitted by Mr. Graubard, entitled, "Agreement for Purchase of Securities Between Robert W. Purcell and Alleghany Corporation," consisting of four pages, was received in evidence and marked Objectants' Exhibit 454, as of this date.)

[fol. 2735] (3997) By Mr. Graubard:

Q. Mr. Purcell, was this agreement actually executed on January 20, 1950?

A. I think so, or thereabouts, within a few days one way or the other.

Q. Is this agreement the final draft of a series of drafts which you commenced preparing and submitting to Mr. Young as early as August, 1949?

A. I would say that it is the final of a series; but I do not remember when I prepared the first one.

I have given you my file, which has the whole succession of drafts, whatever they may indicate.

Q. May I point out to you, sir, that in your file a certain document entitled "Second Draft," is dated August 12, 1949.

Would that assist you in refreshing your recollection as to when you began to prepare these drafts?

A. That could well be.

Q. When you first asked Alleghany Corporation through Mr. Young to consider entering into an agreement with you whereby you would acquire certain shares of I.D.S. stock without risk to yourself, do you (3998) recall whether, at [fol. 2736] that time, Mr. Young and Mr. Kirby also contemplated buying stock for themselves, but buying the stock through or from Alleghany Corporation?

A. I do not agree with you that it was without risk to me, so I do not want to accept your characterization.

I would say that when I first discussed it with Mr. Young I do not recall any discussion of the proposed exchange which finally took place on January 20, 1950, as between Mr. Young and Mr. Kirby, on the one hand, and Alleghany Corporation, on the other.

Q. When did the subject of acquisition by Mr. Young and Mr. Kirby of I.D.S. stock owned by Alleghany Corporation first come up, by way of discussion or other communication with you?

A. I would say not more than a very few days prior to December 6, 1949—was it?

Mr. McFadden: December 6, 1949.

A. (Continuing) December 6, 1949.

Q. By that time, Mr. Purcell, all of the adverse points set forth in Objectants' Exhibit 453 in evidence were already known to you?

[fol. 2737] (3999) A. I think so.

Q. And they had been discussed by you with Mr. Young; is that correct?

A. I think so.

I would like to state that I am not even sure that the offer of Alleghany to the officers for an exchange of I.D.S. or Alleghany preferred was discussed with me prior to the actual meeting on the 6th. It may have been a few days before and it may not have been discussed with me until

the meeting, or immediately prior to the meeting; I cannot be sure.

It was not a part of my original negotiations with Mr. Young, and, through Mr. Young, the Alleghany Corporation, commencing in August and September of that year.

Q. Referring to your agreement with Alleghany Corporation, of January 20th, Objectants' Exhibit 454, I note that the first recital states that you had been instrumental in acquiring, on behalf of Alleghany Corporation, some 104,000 shares of common stock, and 48,000 some odd shares of Class A stock of I.D.S.

Is that correct?

[fol. 2738] (4000) A. Whatever it says.

Q. Is that correct?

A. Yes.

Q. It also recites that you had, at that time, acquired, for your own account, certain shares of Class A stock of I.D.S.

Is that also correct?

A. That is correct.

Q. Also, that you intended to acquire in the open market, or privately, additional shares of common or class A stock of I.D.S.

Is that correct?

A. If that is what the agreement says, yes, it is correct.

I mean, are you asking me if that is what the agreement says?

Q. No, I am asking you whether—

A. Yes; it is correct.

Q. (Continuing)—it is correct, whether the recital of facts is correct?

A. Yes; it is correct.

Q. It further recites that it is in the best (4001) interests [fol. 2739] of Alleghany that you have a substantial personal interest in I.D.S.

I shall not ask you if that is correct.

The first paragraph states that Purcell agrees to assume an active part in the administration of the affairs of I.D.S.

Did you, in fact, do so?

A. I did.

Q. Did you continue to take an active part todate?

A. Yes. I haven't been very active recently, but I did at that time.

Q. You still are chairman of the board, Mr. Purcell, are you not?

A. Yes.

Q. Has there been a change in your status recently?

A. Since the Murchison interests acquired control I have been relatively inactive, and the duties of the chairmanship have been redefined in the by-laws.

Q. Have the duties been redefined to exclude certain administrative functions that you previously (4002) performed?

[fol. 2740] A. Yes.

Q. Was this done at your request?

A. By joint agreement, yes.

Q. Paragraph 2 of this agreement states that you will use your best efforts to acquire shares of common stock or class A stock of I.D.S. at the lowest prices available, and in no event to exceed an average of $10 per share, or an aggregate total purchase price of $125,000.

Did you use such best efforts to acquire these shares?

A. I made known to certain brokers that I would be interested in acquiring stock. I did not got out and actively solicit shareholders to sell their stock to me.

Q. These were brokerage firms in New York City?

A. No; I think there was one in Cleveland and one in Minneapolis.

Q. Did you also use, Bear, Stearns in New York City?

A. I had bought some stock from Bear, Stearns, (4003) [fol. 2741] but I think that was prior to December 6th.

Q. Did you use any firm in New York City, to acquire the stock?

A. I do not think so.

Incidentally, I never used a firm to acquire stock. I would listen to offerings, that is all that I did.

Q. How did you listen to offerings?

A. It think it is quite different to listen to an offering which your broker may have for you, from authorizing a broker to bid so many dollars per share in the national sheets.

Q. In other words, you asked brokers to let you know what stock was available, rather than instruct a broker to go out and purchase at a certain price?

A. That's right.

Q. In accordance with this agreement of January 20, 1950, Mr. Purcell, you made your best efforts to acquire shares by asking brokers to advise you of what was offered.

Is that correct?

[fol. 2742] (4004) A. I do not think I spread that word very far; but I had a broker in Cleveland, and a broker in Minneapolis, who knew of my interest, that was all, knew that I was a prospective buyer.

Q. Did they advise you, from time to time, of what was being offered on the market?

A. I wouldn't say that, but occasionally they would call me up and say, "I can offer you so many shares at a certain price"; and if looked to me as if it was the best price available, and if it was something that I would want to buy, I would buy it.

That is the way I acquired the stock that has been introduced in evidence here.

Q. Between the date of the Alleghany annual meeting—which I believe was about May 3, 1950—and January 20, 1950, did you acquire any stock of I.D.S. through these brokers?

A. Yes.

Q. How many shares?

A. That's been introduced in the record.

I will get it again for you, if you want it.

[fol. 2744] (4005) Q. May I see it again, please.

A. (Examining document) Between January 20, 1950, and May 3, 1950, I purchased a total of 275 shares.

Q. May I see that paper to which you have just referred, Mr. Purcell?

A. (Handing ledger sheet to Mr. Graubard.)

Q. Were there any shares offered to you, Mr. Purcell, in excess of the 275 shares which you purchased during that period of time?

A. I think that there were, but I cannot be positive.

Q. After the period in question, Mr. Purcell, what was the price you paid for the first block of stock that you next acquired?

A. After May 3?

Q. That is right.

A. $13.63 a share.

Q. That was on what date?

A. May 27th.

Q. And thereafter, Mr. Purcell, you continued to make purchases at higher prices?

[fol. 2745] (4006) A. That's right.

Q. These 275 shares were the highest total of shares that you could acquire within the terms of the agreement of January 20th?

A. No, sir, that is not correct. I included in the agreement of January 20th all of the shares which I had purchased previously, and by that time I had, of course, had a discussion with Mr. Young, in which he had indicated that he was going to protect me and see that I did get these shares.

I did not feel that I should be or that there was any need for me to be aggressive in the market.

Along about that time I went out of the country and bought no shares while I was away.

However, stock was offered to me during that period, that I did not buy.

Q. Do you recall how many shares were offered to you, and at what price?

A. No; but I believe it was a fairly substantial number.

Q. Do you know who offered it to you?

A. No; I do not recall now; but I felt that (4007) the [fol. 2746] price was out of line with the prices at which

stock had been available, and I did not want to pay substantially above the figure at which the stock had been available prior thereto.

According to paragraph 3 of the agreement, Mr. Purcell, Alleghany, upon your request, agreed to purchase from you shares purchased by you in accordance with this agreement under certain terms and conditions which we need not spell out here.

Did you at any time request Alleghany to purchase such shares from you, Mr. Purcell?

A. No; I did not.

Q. Did you, in accordance with paragraph 4 of this agreement, have occasion to offer to Alleghany any of your I.D.S. shares, prior to January 20, 1955?

A. That agreement was cancelled in 1953, Mr. Graubard, and prior to that time I did not have that occasion.

Even subsequent thereto, however, I always spoke to Mr. Young prior to selling any stock, in order to see if he would have any interest in buying it.

Q. When in 1953, can you tell us, was that (4008) cancelled?

[fol. 2747] A. In March of 1953, when I was asked to relinquish all of my other positions and go to Minneapolis to accept the presidency of this company, I felt that it was unfair to have outstanding an option in favor of Alleghany Corporation in which, if exercised, would have removed, shall we say, the incentive which it had originally been set up to grant me; and I did not want to go to Minneapolis with the threat that that stock might be taken away from me.

I therefore requested, at that time, as a condition of my going to Minneapolis, that the agreement be cancelled, and it was cancelled, I believe, by an actual board of directors meeting of Alleghany Corporation, the meeting which took place as soon after March of 1953, as they had a meeting.

The Referee: Off the record.

(Discussion off the record.)

The Referee: On the record.

By Mr. Graubard:

Q. Mr. Purcell, I show you Objectants' Exhibit 391 in evidence, consisting of a series of weekly letters from Margaret Stiver, secretary to Mr. Purcell, (4009) to Mr. Robert [fol. 2748] R. Young, and ask you whether you have previously seen such letters or copies thereof (handing documents to the witness)?

A. (Examining same) I do not know whether I have ever seen these before or not.

Q. Were you aware of the fact that your secretary was preparing these statements for Mr. Young?

A. Yes; I was.

Q. Did you instruct Miss Stiver as to how to obtain the information which was transmitted to Mr. Young?

A. I do not believe I did.

Q. Do you know how she obtained the information transmitted to Mr. Young?

A. It is my best impression and opinion that she called up the firm of Saunders, Stiver & Company of Cleveland, because she was a relative of Mr. Stiver of that firm, and Mr. Stiver is the man who prepared the report, and she used to get quotations from Saunders, Stiver on unlisted securities in which we were interested.

She would call that firm and get these quotations.

It is also my impression that he probably gave (4010) her [fol. 2749] his own personal position in the stock—that is, his firm's position in the stock—and that is what these quotations represent.

Q. Having looked at these letters, Mr. Purcell, do you notice that the January 20, 1950, letter states that there is no stock offered on the basis of information coming out of Minneapolis through Chicago?

A. I did not so notice, no.

Q. By the end of March, 1950, according to these letters the bid price on I.D.S. stock was 10 with none being offered.

Would you know whether that was a correct reflection of the market at that time?

A. I was in Europe at that time.

Q. For what period of time were you in Europe, in the Spring of 1950?

A. I left on February 22nd and got back on or about April 14th.

I would be more inclined to think, however, that that is a reflection of Mr. Stiver's own position in the market, that he was bidding 10 and had none to offer—that is, his firm.

[fol. 2750] (4011) Mr. Daly: (To Witness) His firm?

The Witness: That they had none to offer.

Mr. Daly: That his firm—

The Witness: That is right, that his firm had no stock in their portfolio to offer.

By Mr. Graubard:

Q. Did you have anything to do, Mr. Purcell, with Plaintiffs' Exhibit 32 in evidence, which is the additional material in connection with the proxy statement of Alleghany Corporation, dated April 26, 1950?

A. Yes; I did.

Q. Did you suggest, in preparing this additional material, that the stockholders be advised that on the date in question, April 26, 1950, the quotations on I.D.S. class A stock should an excess of 10 bid with none offered?

A. I would have to look at the—

Q. I show you, Mr. Purcell, Miss Stiver's letter to Mr. Young, of April 26, 1950, and, also, Plaintiffs' Exhibit 124 in evidence, showing the bid and asked prices (handing [fol. 2751] (handing documents to the (4012) witness)?

A. Would you show me the notice of April 26th.

Q. Yes; surely (handing document to the witness).

A. (Examining documents) Was the question, Mr. Graubard, did I suggest—

Q. That the market prices be included in this additional material, in view of the fact that these prices were at the time in excess of 10 a share.

Mr. Daly: I object to the form of the question, in view of the fact that there is a letter there which shows prices.

The Referee: The objection is overruled.

He may answer the question.

A. I did not make any such suggestion, no.

The original proxy statement had shown that the stock was 9 and 9¾, and I would not have wanted to make and issue over 25 cents on the stock.

Q. And even though the letter in question showed 10 and ¾ bid, none offered, you did not consider that difference material enough to reflect this difference in market price in the latest proxy material sent to the stockholders?

[fol. 2752] (4013) A. Well, I did not see the letter, and it is not my habit to keep in day to day touch with the market price of stocks; so that I would not be sure that I knew at the time this letter was prepared as to exactly what the price was, I would have no idea as to whether I knew that or not, as to whether or not there was any quote or bid.

Q. And you have no present knowledge, Mr. Purcell, as to what these prices were, at that time?

A. No; I do not.

Q. Thank you.

Did your analysis of the I.D.S. holdings and earnings, in the middle of 1949, bring you to the conclusion that this security was a good purchase at the current price for its stock?

A. For me, personally, yes.

Q. Did you continue so to think, during the balance of the year 1949, and during 1950?

A. Well, when I was buying stock I certainly must have assumed that I had a fair chance of making a good purchase.

It certainly was not a sure thing at all.

[fol. 2753] (4014) Q. I did not ask you that.

On balance you thought that it was a good investment?

A. In a modest way, yes, for me.

Q. Did you advise Mr. Young of the favorable factors concerning I.D.S.'s future, as well as you did of the unfavorable factors?

A. Yes.

In our discussions concerning I.D.S. I think I told him of everything pro and con.

Q. Have you read Exhibit 317 in evidence, a memorandum dated April 19, 1949, from Robert R. Young, chairman, to Alleghany Corporation board of directors?

A. I read it at that time. I haven't read it since.

Q. Would you look at that exhibit in order to refresh your recollection, and then tell the court whether you approved of the contents of the memorandum at that time (handing document to the witness)?

A. (Examining same) I might say that I had nothing to do with the preparation of this memorandum.

[fol. 2754] (4015) I saw it as a member of the board of directors of Alleghany, that it had to do with the determination of the proposed purchase.

I would have to read it minutely, carefully, and spend some time on it, in order to determine whether I agreed at that time with everything that was said in here.

But I think, in general, and in essence, I felt that this was a memorandum which fairly presented the overall proposal to the board of directors.

Q. Referring I think to the first full paragraph on page 3, the leverage situation, did you at that time agree with the statements contained in that paragraph?

Mr. Daly: You mean all of the statements, or the first sentence?

Mr. Graubard: Let us take the leverage part.

A. There is no question but that it was a security of the most extreme leverage.

Q. Had this leverage value been lessened materially by the end of 1949?

[fol. 2755] (4016) A. I do not think leverage is necessarily value.

Leverage can work downwards, just as rapidly as it can work upwards, in a situation of this character.

Q. I understand that, Mr. Purcell.

I am now referring to the plus side which is reflected in the paragraph at which you just looked.

A. (Examining document) I do not read this as indicating that leverage was necessarily a thing to be desired. It just says:

"In buying Investors Syndicate we are buying a common stock in a specialized company with the most extreme leverage."

I think you could interpret that as meaning that is good or that that is bad, depending upon your philosophy.

Q. The last paragraph of this exhibit recites:

"Mr. Kirby, Mr. Purcell, Mr. Anzalone, Mr. Shipman and I are prepared to recommend that Alleghany Corporation" etcetera, meaning acquire this interest.

Was that a correct statement, Mr. Purcell, as far (4017) [fol. 2756] as you were concerned?

A. Yes; it was.

Q. Without necessarily obtaining your concurrence to all of the statements in Mr. Young's memorandum to the board of directors, you did agree that this was a worthwhile investment to make?

A. Definitely.

I have been quite proud of my participation in it. It has done a great deal for Alleghany Corporation.

Q. I agree with you on that, too, Mr. Purcell.

When the proxy statement of April 6, 1950, was prepared, Mr. Purcell, did you not already have an agreement with Mr. Young and Mr. Kirby to buy shares of I.D.S. out of the amount they would receive from their preferred stock?

A. I had an informal understanding, yes; that is all that I ever had.

Q. Was it because of that informal understanding that you ceased to purchase more stock on the open market?

A. No; I think that was because I went to (4018) Europe. [fol. 2757] Q. Actually—

A. I, of course, was not going to buy any stock for more

than $8 and whatever it was a share, because I was going to get it at that price, I hoped, naturally.

Q. And you could not actually have acquired it at that price, could you?

A. I did buy some in February, and then I went to Europe.

Q. But only 275 shares, Mr. Purcell; is that correct?

A. Between January 20th and the time I left for Europe.

Q. And none thereafter, until in May, on your own, and without any agreement covering you—

Mr. Daly: That is all in evidence, Your Honor.

Q. (Continuing) —you purchased I.D.S. stock at a price materially above $10 a share.

Is that correct?

Mr. Daly: I object to it. It has (4019) all been gone into.

[fol. 2758] The Referee: Objection overruled.

A. $13, whatever it was.

Q. Can you tell us where in this Plaintiffs' Exhibit 30 in evidence there is reflected a statement of your agreement with Mr. Young and Mr. Kirby to purchase the 12,000 some odd shares from them?

A. Is that the agreement of April—is that the proxy statement of April 6th?

Q. That is right.

A. It is not mentioned in there; and, of course, I did not return from Europe until April 14th, and I did not see the proxy statement until April 14th, and as soon as I saw the proxy statement I raised the question as to whether my understanding with Mr. Young and Mr. Kirby might not be a matter which ought to have been included in the proxy statement as a material transaction in which a director had an interest.

I either went to the Securities and Exchange Commission or had someone go on behalf of Alleghany, and asked the Commission if they felt that this (4020) agreement, [fol. 2759] which was at that time, and for the first time, ex-

plained to them, should be communicated to the stockholders.

After some consideration they felt that it probably was an interest on the part of a candidate in a transaction and, consequently, we prepared the supplemental notice of April 26th and sent it to the stockholders.

I feel quite sure that if I had been present at the time the original proxy statement was prepared, I would have suggested its inclusion at that time.

It was I who suggested its inclusion, as soon as it came to my attention.

Q. But, at the same time that you took that matter up with the Securities and Exchange Commission, you did not take up, as I understand this, the question of including in the supplemental proxy statement the change in market price that had taken place since the original statement had been prepared.

Is that correct?

A. Well, I didn't—

[fol. 2760] (4021) Mr. Daly: I object to the form of the question.

The Referee: Objection overruled.

A. I should say "no."

I do not remember if I discussed it or not, but I am sure that if the S.E.C. had asked that that be included, it would have been included.

They were following I.D.S. just as closely as I was, or more so, at that time.

Q. Mr. Purcell, do you have any knowledge of an alleged sale of I.D.S. stock, that took place on January 20, 1950, reflected in Plaintiffs' Exhibit 258 in evidence (handing document to the witness)?

Mr. Daly: Will you please read that question back to me.

(Whereupon, the pending question was read by the reporter, as recorded.)

A. (Examining document) I recall that I was informed at that time that there had been such a sale.

I do not know now where that information came from.

Q. You do not, of your own information, know whether there had actually been such a sale?

[fol. 2761] (4022) A. I do not.

Inasmuch as stock sold subsequently at about that price, I have no reason to doubt it; but I do not at this moment know of such a sale.

Q. Prior to May, 1950, what were Mr. Kirby's activities in regard to I.D.S.?

A. He gave a good deal of attention to it at board meetings, and I am sure that I discussed the matter with him many times.

I was not, however, physically located in an office adjacent to Mr. Kirby, and I really could not testify as to the way he spent his time, at that time.

Q. Subsequent to, let us say, May, 1950, what were Mr. Kirby's activities in regard to I.D.S.?

A. In 1950, in the about the middle of the year, and at Mr. Kirby's insistence, the auditors were changed from Rossiter & Company to Peat, Marwick & Mitchell & Company, and Mr. Eppler, a senior member of the firm of Peat, Marwick, Mitchell & Company, who is a neighbor of Mr. Kirby, took on the direct supervision of the affairs of the company.

[fol. 2762] (4023) It is my understanding that Mr. Eppler had weekly or more frequent conferences with Mr. Kirby on the company's affairs.

Q. Did you have any conferences with Mr. Kirby in regard to the company's affairs, subsequent to May, 1950?

A. Yes; I had a number of conferences with Mr. Kirby.

Q. In connection with board meetings of Alleghany?

A. Yes; and I am sure occasionally between board meetings.

But I really think he got most of his information from Mr. Eppler, and most of his consideration of the affairs of the company was as a result of those meetings with Mr. Eppler.

Q. So that you do not really know, comparatively speaking, Mr. Purcell, whether he gave more time to the affairs after May, 1950, than he did before May, 1950?

A. I am sure that he gave more, on account of the change of auditors which was effected at Mr. (4024) Kirby's insistence.

[fol. 2763] Q. Did he speak to you more frequently after May, 1950, than before?

A. I could not say whether he did or not; I just do not know.

Q. How frequently did he visit the I.D.S. offices in Minneapolis, after May, 1950?

A. Neither he nor Mr. Young ever visited the offices at all.

Q. Did either he or Mr. Young ever take on any position as an officer or director of I.D.S.?

A. No.

The Referee: Off the record.

(Discussion off the record.)

The Referee: On the record.

By Mr. Graubard:

Q. So far as you know, personally, Mr. Purcell, did Mr. Young devote a greater proportion of his time to the affairs of I.D.S. after May, 1950, than he did before?

A. Yes; I believe he did.

Q. To what extent?

[fol. 2764] (4025) A. I am afraid that I cannot give you that.

He devoted more time to the affairs of the company, and at times he devoted a large amount of his time to the company's affairs.

Q. Did he devote a very large part of his time to the affairs of I.D.S., during 1949?

A. Well, again, I wasn't sitting next to Mr. Young every day all day long; but from my general communications and contact with him, I would say that during the latter part

of 1950, 1951, 1952 and 1953, he devoted a very substantial amount of his time to I.D.S.

Prior thereto he also devoted whatever time was necessary.

Those are questions of generalities, however, and I am afraid I cannot answer them in other than generalities.

Q. Mr. Purcell, you are a defendant unserved in the litigation before this court?

A. I'm afraid so.

Q. When were you first consulted about this settlement, if at all?

[fol. 2765] (4026) A. When Mr. Wallace called me at one time and spoke to me about it.

Q. When was that?

A. I should say some time last summer.

Q. About July or August?

A. It could have been; probably so.

It might have been—yes, I would say probably at about that time.

Q. Was that at the time Mr. Wallace suggested that he represent you as attorney in fact?

A. He asked my authority, or if I would give him authority to represent me as attorney in fact in connection with the settlement; and I think that that is the first time that I heard about it.

Q. Were you ever asked by any person to make a contribution to the settlement amount?

A. No; I do not know whether I will be or not.

Q. Mr. Purcell, when were you first informed in 1953 that Alleghany Corporation was contemplating making a sale of I.D.S. stock to the Murchisons?

A. Some time around the middle or latter part of December, I would say.

[fol. 2766] (4027) Q. Who informed you of that proposed transaction?

A. I believe it was Mr. Young.

Q. Did Mr. Young advise you, at that time, that he was contemplating additional sales of voting stock to the Murchisons?

A. I do not think so.

Q. Did he make any such statement to you, previously or subsequently, during the year 1953?

A. I do not think so.

Mr. Graubard: That is all.

Thank you.

Mr. Daly: I have a few questions, if I may.

The Referee: Proceed.

Cross-examination

By Mr. Daly:

Q. After your telephone conversation with Mr. Wallace concerning a proposed settlement of this action, did you receive a letter from Mr. Wallace which enclosed a copy of the stipulation of settlement?

A. I did.

[fol. 2767] (4028) Q. I show you Exhibit 27-E, and ask you if that is the copy of the letter that you received (handing document to the witness)?

A. (Examining same) I believe it is.

Q. Did you receive it on or about the date of that letter?

A. Approximately so.

Q. So that you had spoken to Mr. Wallace, some time previous to the receipt of that letter?

A. Yes.

Q. Mr. Purcell, you testified this morning that when you left New York for Minneapolis you took certain of the I.D.S. files with you.

A. Yes.

Q. Will you explain to us, generally, what files you took with you and what became of those files thereafter?

A. When I accepted the presidency of I.D.S. I was immediately plunged into a very busy schedule, and then I was sick for a week or so, and, finally, I didn't have any time to review files and decide which I should leave and which I should take.

[fol. 2768] (4029) Therefore, with just a minimum amount of sorting I took all of the files which were in my possession, but they consisted primarily of a volume of reports.

This company produces a very large number of reports, many of which I brought here today, that nobody has asked me about.

Those files went to Minneapolis, and then, when I returned from Minneapolis in 1955, I did have a little better chance to look and see what was there, and a great deal of it was—represented duplicates of financial reports and monthly statements, and things of that kind; and not wanting to bother to ship those back to New York, I discarded those duplicates.

Everything else I shipped back to New York, and turned over to Mr. Wallace.

Mr. Daly: May I say that Mr. Wallace has shown to you, or Mr. George Martin has shown to you, everything that was received from Mr. Purcell, in those cabinets, referring to I.D.S.

I have no further questions.

[fol. 2769] (4030) Redirect examination.

By Mr. Graubard:

Q. You said "monthly reports"?

A. Yes.

Q. You did not send those back to Alleghany Corporation, did you, Mr. Purcell?

A. Not to the—let me say that in 1949 and 1950 I kept my files in Cleveland, and reports accumulated so rapidly that I discarded reports in Cleveland.

Then I accumulated more reports in New York, and I took them to Minneapolis, discarded some of those—those would be 1951 and 1952 reports, and I discarded them to the extent that they were meaningless, and sent them back—and sent the files back to New York.

Q. I asked you that question only for the purpose of establishing that you did have monthly reports.

A. Yes, yes.

Q. In 1950?

A. Yes.

Q. And in 1949?

[fol. 2770] (4031) A. Yes.

Q. And that where these reports contained information of an important nature, in your judgment, you discussed those reports with Mr. Young?

Mr. Daly: When?

Q. Or discussed that information with Mr. Young, as promptly as possible?

A. Well, when I felt it of sufficient importance to do that, yes.

Mr. Blumenthal: I just want to ask one question of the witness.

Recross-examination.

By Mr. Blumenthal:

Q. Mr. Purcell, outside of purchases of I.D.S. stock that you made through the medium of the over-the-counter market, I now desire to ask you this question:

Did you, at any time, directly or indirectly, urge any of the individual stockholders of I.D.S. stock to sell stock to you, personally?

A. No, sir.

Mr. Blumenthal: Thank you.

Mr. Daly: I do have one other question, if I may ask it.

[fol. 2771] (4032) The Referee: You may proceed.

By Mr. Daly:

Q. Mr. Purcell, in this year were you asked to make a swap of your class A stock for the voting stock, in 1955?

A. I was asked if I would hold some of my non-voting stock available for the purpose of swapping it for voting stock with Alleghany Corporation, so that Alleghany could reduce its voting stock holdings below 25 percent.

Q. And that was asked of you by Mr. Wallace?

A. That's right.

Q. Did you express any opinion at that time as to your preference for the class A stock, as distinguished from the voting stock?

A. Yes.

I said, I would, of course, be willing to accommodate Alleghany Corporation, but I would prefer not to.

Q. Did you state why?

A. Because I found that the voting stock is not as marketable as the non-voting.

Mr. Daly: That is all.

[fol. 2772] (4033) By Mr. Crowley:

Q. Mr. Purcell, you will recall you testified this morning about a meeting in Dallas in the summer or late Fall of 1954, concerning I.D.S.

A. Yes.

Q. Have you had occasion since your testimony this morning to refresh your recollection as to who attended that meeting?

A. Yes.

In the light of the conversation which you and I had during the noon recess, I think I was in error in saying that Mr. W. C. Murchison, Sr. was present at that meeting.

The meeting which I attended in Dallas, at which Mr. W. C. Murchison was present, was a prior meeting having to do with the affairs of a company called the American Mail Steamship Company, and not this one.

I think that I was mistaken about Mr. Murchison, Sr.'s presence at that hearing.

Further Redirect examination.

By Mr. Graubard:

Q. What percentage of the voting stock of (4034) I.D.S. [fol. 2773] would you have owned had you made the suggested transfer of your class A shares for voting shares?

A. Well, I was originally asked—let me see. I would say a maximum of two percent.

Q. Would that by any means have put you in a position of being designated as a controlling stockholder of I.D.S.?

A. No, although it might have made an associate of control.

Q. Would that have imposed any disabilities upon you, Mr. Purcell?

A. Well, that may have; but then, in addition, an instance had come to my attention in early 1955, in which an acquaintance of mine had tried to sell 100 shares of voting stock, and had been unable to do so because of the limited market in the voting stock; because he asked me if I would be willing to accept 100 voting in exchange for 100 non-voting, so that he could sell, because he had had difficulty.

Q. What percentage of the voting stock in 1955 was in the hands of the Murchisons and their associates and Alleghany Corporation?

[fol. 2774] (4035) Mr. Daly: It is all in the record, Your Honor.

A. Alleghany has 25 percent and the Murchisons about 45 percent.

Q. And Mr. Carter?

A. Well, I am sorry, but I do not know.

Q. It would be in excess of 90 percent, would it not, the total?

A. At the close of 1955?

Mr. Daly: He testified as to that this morning.

Q. Let us take the time when your friend was trying to dispose of the 100 shares.

A. At that time I believe that there were about five or six or seven percent of the voting stock not held within the family, so to speak, between Alleghany and the Murchisons.

Q. Can you tell the court whether or not this non-availability of voting stock did not in effect eliminate, to a considerable extent, the market for such stock?

A. Well, it made it difficult to sell, because brokers were [fol. 2775] (4036) quoting bid and offering prices on the class A stock, and when some voting stock showed up in the market it was always a question as to whether that was good delivery or whether it wasn't; and I know—I have been advised of occasions when the holders of voting shares have had to take two or three points less than the quote for the non-voting stock at the same time.

Q. However, for the investor who was not associated with what you call "the family," the voting stock was at least as good, in every respect, as the class A stock, as long as the holder did not own 15 percent or more of such voting stock?

Is that correct?

A. Well, under its terms and provisions it has the same rights to the assets and earnings of the Corporation as the non-voting stock.

I do think that it has been less marketable than the non-voting stock.

Q. We understand that, and we have been trying to establish the reasons for that.

As long as one is not under the disability of (4037) [fol. 2776] being designated under the Investment Company Act as a controlling party or one associated or affiliated with a controlling party of I.D.S., is it not a fact that the voting stock has all of the values of the class A stock, plus additional value, to wit, the right to vote?

A. I do not think that the right to vote is worth anything when others own 90 percent of that voting stock, and all of the other elements of value are there, except that you cannot sell it so easily, and you frequently have to take a discount for it.

In other words, everything you say is right, as long as you never want to sell it; but the minute you want to sell it you have difficulties; and that is why I did not want to take the stock.

Q. In other words, the sole disadvantage of holding voting stock in small amounts is lack of marketability—

A. That's right.

Q. (Continuing) —because most of the voting stock is locked up?

[fol. 2777] (4038) A. That's right.

Q. In the hands of the Murchisons, Alleghany, and their associates?

A. That's right.

Mr. Graubard: Thank you.

That is all.

The Referee: You are excused.

(Witness excused.)

The Referee: We will adjourn at this time to tomorrow morning at 10:30.

(Whereupon, at 4:30 p. m., an adjournment was taken to Friday, January 6, 1956, at 10:30 a. m., at the same place.)

[fol. 2778]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-354

INVESTORS DIVERSIFIED SERVICES, INC.
Minneapolis

August 2, 1955

Mr. R. W. Purcell
Deer Lick Farm
Cape Vincent, N.Y.

Dear Bob:

I understand you called when I was out of the office in regard to any reports that were distributed to Mr. Young in the year 1949 and to the middle part of 1950. The only reports that we have distributed directly to Mr. Young in this period are (1) Purchases and Sales of Investments for the various companies in our group, (2) Diversification of Investments for the three open-end companies in our group.

For the month of August 1949 only, additional reports were sent to Mr. Young. This consisted of the following:

IDS

Detailed Comparative Balance Sheet & Statement of Net Income & Earned Surplus.
Summary of Operations
Monthly Report of Purchases and Sales of Securities
Detailed Comparative Trial Balance of Investment Securities

Comparative New Business Productions by Companies—Current Week and Year-to-date
Comparative New Business Production and Representatives Turnover for Month and Year-to-date
Monthly Report of Loan Agency Operations, etc. (recap sheet only)

ISA

Summary of Operations
Monthly Purchases and Sales of Investment Securities
Detailed Trial Balance of Investment Securities Only

ISC

Monthly Summary of Operations

Affiliated Fund Companies

Detailed List of Investments by Industry Groups
Purchases and Sales of Investments

Best Regards.

Yours very truly,
N. B. Waag

NBW:ER

[fol. 2779]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT NO. K-355

PORTIONS OF ZENN V. ANZALONE TRANSCRIPT OF HEARINGS BEFORE REFEREE TO BE SUBMITTED IN EVIDENCE BY DEFENDANTS

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(888) By Mr. Graubard:

Q. Have you, Mr. Wallace, at any time prior to April, 1955, ever reduced to writing a list of all the actions affecting Alleghany Corporation?

A. I don't remember that.

Q. Have you ever made such a list for reporting such data to your auditors?

A. The practice of the auditors is to ask me what law firms are representing or have represented Alleghany [fol. 2780] (889) Corporation during the fiscal years which they are examining the books, and then I know—because I have seen copies of some of the letters that they have gotten back, and I have answered such letters before I came to Alleghany—that the respective law firm writes to them and tells them what matters they have handled for Alleghany during that fiscal year.

* * * * * * *

[fol. 2781] (896) Q. Did you ever discuss with Mr. Young the causes of action contained in the consolidated amended complaint, or any of them?

A. Many times I discussed all of these causes of action with Mr. Young.

Q. Did you discuss with Mr. Young the first cause of action in this consolidated amended complaint? Are you familiar with it?

A. Yes, I am very familiar with it; and, yes, I discussed it.

[fol. 2782] (897) Q. Did you at any time look into the records of Alleghany Corporation for data concerning the 1949 and 1950 transactions referred to in this first cause of action?

A. Yes; I think early in the game Mr. Young asked me to prepare extracts of the minutes and get copies of the proxy statement and the correspondence in this transaction, from my records.

Q. And, Mr. Wallace, did you compile all of this written data?

A. I furnished Mr. Young with this data, yes.

Q. Do you have a copy of this data available?

A. I subsequently turned that data over to Mr. Pomerantz, copies of that data. I think that most of it is in evidence here.

Q. Is all of it in evidence?

A. I would have to look at the list of exhibits. I recall saying to Mr. Daly that the January 20th letter of Mr. Anzalone was not in evidence, as I recall.

I mean, I just cannot say. The pertinent—the important documents are, I think, all in; but there may be a letter of that nature which, through inadvertence or some decision that I am not aware of, (898) he did not put it in.

[fol. 2783] Mr. Haudek: Particularly with respect to Mr. Anzalone's letter that Mr. Wallace mentioned, I did not put it in because I could not see any earthly relevance to it.

The Witness: Well, I do.

Mr. Graubard: Perhaps you would want to supplement the record at this time, since this has been mentioned, by putting it in, in order to eliminate any further inquiry.

The Referee: We have so much material in the record now, half of which does not bear on the question of the fairness and reasonableness of the settlement, and if, in the judgment of the attorney for the plaintiff stockholders this letter does not have any bearing on the fairness and reasonableness of the proposed settlement, I would propose that we keep it out.

Mr. Haudek: I will be happy to show it to Mr. Graubard.

Mr. Graubard: I will be happy to see it, Mr. Haudek.

Q. Did your turn over to Mr. Pomerantz all the data [fol. 2784] (899) that you found in your files, pertaining to this I.D.S. transaction?

A. To the best of my knowledge, I did. I know that I turned some of it over to him, and I got it right back, on the same grounds as this letter of Mr. Anzalone was not placed in evidence.

Q. Would you check your records again, please, Mr. Wallace, in order to ascertain whether or not there is any memorandum, letter, note, document, or any evidence of any transaction, in writing or print or any form whatsoever, which has not been turned over to Mr. Pomerantz, but which is in the possession of Alleghany Corporation?

A. I will have some one in my office do that; yes, sir.

Mr. Daly: I do not propose to do that at all, Your Honor.

Mr. Graubard: I am not asking Mr. Daly to do it. He is going to be in California.

Mr. Daly: I am going to direct the witness not to do it.

Mr. Graubard: Does the witness take directions from Mr. Daly with respect to this? Does he take (900) directions [fol. 2785] from Mr. Daly in this matter?

The Witness: No, in this matter I will act on my own.

I appreciate Mr. Daly's advice, but I will have some one check.

I do not see any purpose in it, but I will see to it that it is done.

Mr. Daly: I object on behalf of the defendant directors to such request. It is too broad, it is meaningless.

The Referee: It is harmless, also. You can also say that about it.

Mr. Daly: You can say that, too.

Mr. Graubard: I hope not, Your Honor; I hope that there will be a real punch to this.

The Witness: Mr. Graubard, I would like to say this here, if I may: if you have in mind any particular document, I wish you would tell me, because the files of Allegheny are extensive, and if I know you were looking for some particular document I would do my level best to dig it out.

The Referee: Off the record.

(Discussion off the record.)

* * * * * * *

[fol. 2786] (1424) Mr. Haudek: We received our papers from Lord, Day & Lord.

Mr. Daly: From me; Mr. Wallace did not give them anything directly.

The Referee: You did receive certain papers, Mr. Haudek?

Mr. Haudek: Numerous documents, and part of them were marked as exhibits in the depositions before trial, and part of them were not so marked.

Now, most of these papers that we received have already been introduced at these hearings.

There are just a few more papers left, which I expect

to offer at the earliest opening that I will get between witnesses.

The Referee: Were there some papers that you looked at that you discarded, that you did not put into evidence?

Mr. Haudek: Yes, sir.

The Referee: That you made no use of?

[fol. 2787] (1425) Mr. Haudek: That is right. There are some that I did not put into evidence, and that I do not propose to put into evidence, because they are clearly and completely irrelevant.

Now, if Mr. Graubard is anxious to look at them, I will be very happy to show them to him.

The Referee: Will you do that please, during the recess, Mr. Haudek?

Mr. Haudek: Let me suggest, if I may, the following: I would like to offer those papers that we intend to offer, and then to show Mr. Graubard what I have received and what I have not offered.

The Referee: All right, because he is entitled to make up his mind as to whether he considers them material or immaterial to the inquiry we are making here.

Mr. Graubard: Thank you, sir.

I should also like to know which papers Mr. Daly received from the Alleghany Corporation files which he did not turn over to Mr. Haudek.

Mr. Daly: I do not think that we did.

[fol. 2788] (1426) What we did, or what Mr. Scott did, was to go through the various files with Mr. Wallace and picked out or had copies made of a lot of things.

I do not think we got any of the originals, we had copies made; and I think that everything that we got from Alleghany and, also, for the examination before trial and the settlement proceedings, copies were turned over to Mr. Haudek.

I will go through the files again and see if there is anything. I will really have to consult with Mr. Haudek, because I really do not know what he does not have that I may have.

Then, of course, there are a couple of cabinets over at our office, Mr. Wallace, and papers, that we never made copies of.

* * * * * * * *

[fol. 2789] (1546) The Referee: All right.

By Mr. Kazon:

Q. What are Mr. Purcell's duties now, with regard to I.D.S.?

Mr. Adams: I object to this, Your Honor.

It seems to me that we have gone pretty far afield.

The Referee: I do not know what it means, but, however, I will allow Mr. Kazon to get an answer to that question.

Mr. Adams: Mr. Kazon's question is with respect to Mr. Purcell's present duties.

The Referee: If he knows. He may not even know.

I will let him answer.

(To Witness) Do you know what Mr. Purcell's duties are at the present time?

The Witness: He is an active director and chairman of the board of directors. He has no executive duties.

Q. As a director of I.D.S., Mr. Clark, do you get regular earnings statements?

[fol. 2790] (1547) A. Oh, yes.

Q. How frequently do you get them?

A. We get them, in summary form, every month, and we get them in rather elaborate form once a quarter.

Q. Do you whether that has been the practice of I.D.S. for some time?

A. I do not know.

The Referee: (To Witness) You do not know beyond the time when you became a member of the board?

The Witness: That is right, sir, beyond the time when I became a director, that is right.

Q. How soon after the end of the month do you get a report, as to the monthly business?

A. It seems to me that it averages about the 25th of the month.

Q. Do you know who prepares those reports?

A. (Laughing.)

Mr. Adams: I press my objection.

The Referee: Objection overruled.

(To Witness) You may answer.

A. The officers prepare them.

[fol. 2791] (1548) By Mr. Kazon:

Q. When you say, "the officers," Mr. Clark, I presume you are referring to the treasurer and the secretary?

A. The comptroller.

Q. And you get your reports from those officers?

A. The report is forwarded to me by the president?

Q. Do you know that one of the causes of action that is being settled here involves the exchange of preferred stock, by Mr. Young and Mr. Kirby, with Alleghany Corporation, for stock of I.D.S.?

A. I don't know anything about it.

Q. You do not know that that is involved here at all, Mr. Clark?

A. No, sir.

Q. As a director of I.D.S. you would be in a position now to find out whether there are in the files of I.D.S. any monthly earnings statements to the company during the first three months of 1950, would you not?

The Referee: I will sustain that objection.

Mr. Kazon: I would like, if Your Honor please, to address a request to Mr. Adams, as (1549) counsel for the [fol. 2792] Murchison defendants—

The Referee: Let us finish up with Mr. Clark first, Mr. Kazon.

Mr. Kazon: Very well, sir.

* * * * * * *

[fol. 2793] (1558) Mr. Kazon: That is all, Your Honor. Thank you, Mr. Clark.

The Referee: Are there any further questions?

(No response.)

The Referee: You are excused, Mr. Clark.

(Witness excused.)

Mr. Kazon: If Your Honor please, I wanted to address a request to Mr. Adams—

The Referee: I will give you a chance, Mr. Kazon.

Mr. Kazon: I think that Mr. Clark may somehow be involved in this.

The Referee: Go ahead.

Mr. Kazon: In the depositions taken by Mr. Pomerantz some request was made as to monthly earnings statements of I.D.S. during the period (1559) of 1950.

[fol. 2794] I wonder if the Murchison defendants, who have, at least, statutory control, and might possibly be able to do it, whether they would be in a position to have a search made of the files of I.D.S. at this time and produce them for this hearing?

Mr. Adams: We will take it under advisement.

Mr. Wallace: Quarterly.

Mr. Adams: Quarterly statements; we will take it under advisement at this time.

Mr. Graubard: No, no.

May I add to that, sir?

The Referee: Yes, you may.

Mr. Graubard: The request was made for the monthly statements for the years 1949 and 1950; and there was testimony from Mr. Young in the record to the effect that Mr. Purcell received these, discussed the data with Mr. Young, but that a search of the records of Alleghany Corporation did not disclose the existence of these monthly reports; and Mr. Young stated that he (1560) thought that [fol. 2795] Mr. Purcell may have removed those records at the time he went over to I.D.S.

Mr. Wallace: I would like to point out that if there were any reports they were probably quarterly in nature.

Mr. Graubard: I am referring specifically to Mr. Young's testimony in regard to monthly reports; and I might say—

Mr. Daly: You correctly quoted the testimony, as I recall it.

Mr. Graubard: Thank you.

The Referee: All right. You have made a statement, Mr. Graubard, and your request is, will they produce these.

How about it? Who has charge of these records?

Mr. Adams: I have.

The Referee: What do you say.

Mr. Adams: To the extent that I have a cousin first removed from I.D.S., I will take it under advisement and advise you as soon as I can.

Mr. Graubard: I want to thank Mr. Adams; (1561) al- [fol. 2796] though I would like to tell the court that Mr. Adams' words are precisely the same as those of Mr. Daly, when the same request was made of him several months ago.

Has Mr. Daly reached a decision in regard to that request? As yet has he reached a decision in regard to that?

Mr. Daly: I do not have them.

The Referee: Off the record.

(Discussion off the record.)

Mr. Graubard: Your Honor, before we recess for the day I think that it would be expedient and helpful to our next hearings if we could ascertain whether or not Allegheny, through the person of Mr. Wallace, will have available on Thursday the records which have been requested, first, by the subpoena—which I assume will be here; and, second, by the informal request made of him by me previously.

Mr. Wallace: We will have them.

I have only one question: who is going to pay for the truck?

* * * * * * *

[fol. 2797] (1722) Mr. Graubard: We are going into this only because Mr. Daly wants this on the record.

I would like to have the record show this: that owing to inadvertence or misunderstanding the 1949 I.D.S. files

of Alleghany are not in court today. An arrangement has been made with Mr. Wallace, however, with the approval of Mr. Daly, for access to these records to be had at the Alleghany office on this coming Monday, and that Mr. Wallace will notify Mr. Kahan and myself of when—

Mr. Daly: We will notify Mr. Kahan, and Mr. Kahan can notify you.

Mr. Graubard: All right, Mr. Daly has, with his usual courtesy corrected me.

[fol. 2798] (1723) Mr. Referee, I have asked for these records, too, and I would like Mr. Wallace to notify me directly when they will be available.

(To Witness) Will you notify me when they will be available, Mr. Wallace?

The Witness: Yes, I will; I will notify you on Monday.

The Referee: All right, proceed.

Mr. Kahan: I would rather see 1949 before going into 1950.

At this time I am only concerned with the 1949 records.

I would suggest that if there are earlier records, Mr. Wallace and if the 1949 transaction that I have referred to goes back to 1948 or earlier, in the Alleghany records, I would like that file, too.

The Witness: I would suggest that you have all these files here now, if you want to see them.

Mr. Kahan: No, I cannot look at those until I have explored this.

The Referee: All right.

* * * * * * *

[fol. 2799] (1738) Mr. Graubard: May I have a recess at this time for that purpose, Mr. Referee.

The Referee: Yes; you may.

At this time we will take a short recess.

(Short recess.)

The Referee: Let us proceed, gentlemen.

Mr. Graubard: Sir, may the record show that we have reached an agreement with Mr. Daly and Mr. Wallace wherein the records requested by us will be made available to us tomorrow in the outside room, and that, accordingly, with your permission, we will proceed with the cross-examination now, with the understanding that we have a reservation for further cross-examination based upon such evidence as the documents may indicate.

. . . . . .

[fol. 2800] (1816) The Witness: Your Honor, I would like to say that the papers Mr. Purcell had probably would not even have been shown to Mr. Young, if the procedure that has been followed in the Corporation to date was followed then, and that is that a great deal of things go across my desk concerning Allegheny, that Mr. Young does not see, because they are detail.

The Referee: (To Witness) Are there any Alleghany files missing?

The Witness: No, sir.

The Referee: Going back to 1953.

The Witness: No Alleghany files. What I said (1817) [fol. 2801] was that if such records or other data came from I.D.S. to Mr. Purcell, that possibly such papers might have been taken with him when he went to—

The Referee: You say, "possibly"; but you did not know whether he did take many or not, or did he?

The Witness: I imagine he took some—he took some of his personal papers and papers he used, when he went to I.D.S.

Alleghany has a main file where each individual officer of the company would send down from time to time material to be put in the Alleghany file itself.

Now, that file has always been undisturbed, and is the same as it was at all times.

What I am saying is that I keep some papers up in my own filing cabinets in my office, and while I am working on

the papers I do not bother to send them down to the file because, just like any other file, once you send it down you do not find it again; and all I thought was perhaps Mr. Purcell had annual reports of I.D.S. and other matters that he might have taken with him (1818) when he went [fol. 2802] out to I.D.S. to assume the active role of president, I think it was, of I.D.S., at that time.

* * * * * * * *

[fol. 2803] (1826) Q. I wish to refer to Plaintiffs' Exhibit 4, the deposition taken of Robert R. Young by general counsel for the plaintiffs on March 29 and March 30, 1955.

On page 8 the following question was put by Mr. Haudek to Mr. Young:

"Q. Do you recall whether Mr. Purcell prepared any memoranda or reports either for you or for the board of Alleghany?

"A. Offhand, I have no recollection of memoranda which were prepared.

"Q. Would please cause a check to be made in the records [fol. 2804] (1827) of the company, both as to the statements which you may have received from others, and as to any memoranda that may have been submitted by Mr. Purcell?

"A. Yes."

Now, Mr. Wallace, were you ever requested by Robert R. Young to make an examination of the records of Alleghany for such statements or memoranda?

A. Mr. Young told me, after he had made his deposition, to cooperate with Mr. Haudek and Mr. Daly with respect to obtaining for them any and all documents that he had promised.

Q. Good.

Now, Mr. Wallace, will you please answer my question.

A. What is that?

Q. Did you ever cause any search to be made—in fact, did you ever search the files of Alleghany Corporation for these statements or memoranda?

A. Of Mr. Purcell?

Q. This may be easier, if you want to read the testimony.

A. I know what you are referring to.

[fol. 2805] (1828) I have looked through the memoranda, etcetera, concerning the 1953 and 1954 transactions; I have looked through the I.D.S. general files; and I have found nothing of any import. I could produce those files.

Q. Do you think you made a thorough check of the records of the company? Are you satisfied that you did?

A. Of the records of the company: I most certainly am not.

Q. Of the records of Alleghany, in order to determine whether there were present in those records any statements or memoranda which may have been submitted to Mr. Purcell, concerning I.D.S.

A. I am satisfied that I looked in the proper places. The records of Alleghany Corporation take up a very large room, consisting of over 60 filing cabinets of four drawers each, and I looked in the drawers where I thought the I.D.S. material reposed, and I am satisfied to that extent; but to the extent of whether there were any misfilings by a file clerk, I just cannot vouch for that.

Q. Did you also look for the 1949 data?

[fol. 2806] (1829) A. No; I did not.

Q. Did you ever submit any of these data to Mr. Haudek or to his associates in this action?

A. I submitted a great deal of data to them.

Q. I am referring now to the data concerning I.D.S. memoranda or statements.

A. For what period?

Q. From 1949, 1950, 1953, 1954.

A. I gave the data concerning those years, yes.

Q. Including 1949?

A. I believe I did, yes.

Q. Do you have that data here, of 1949?

A. I think that the bulk of it has been put in evidence.

Q. You will check again, Mr. Wallace, in order to see whether or not there was any such data which were not put into evidence, but which are in the files of Alleghany?

A. Yes, I will, sir.

Q. The 1950 exchange of stock was the subject of the stockholders' ratification, and the stockholders were asked for proxy statements; is that correct?

[fol. 2807] (1830) A. No; they were asked for proxies.

Q. Proxies?

A. That is right.

Q. And the corporation did file data concerning these proxies with the Securities and Exchange Commission?

A. Concerning the proxy statement, notice, and form of proxy to be used in connection with the annual meeting of 1950 were filed with the Securities and Exchange Commission for clearance, yes, sir.

Q. Was that handled directly by house counsel of Alleghany Corporation, or by an outside law firm?

A. I would imagine it was handled by house counsel.

Q. Whether it was handled by house counsel or an outside law firm, would you undertake to submit for examination all the correspondence and exhibits relating to this transaction, correspondence between the Securities and Exchange Commission and Alleghany or its counsel?

A. Yes, sir. I think most of them are in those papers that I produced on November 3rd.

[fol. 2808] (1831) I produced the entire file pocket concerning the 1950 annual meeting, and I believe they would be in there; but, frankly, I did not go through those things carefully enough to remember whether it was in there or not; and if it was outside counsel I will endeavor to find out who it was and get their correspondence with the Securities and Exchange Commission on this material.

Q. Do you think, Mr. Wallace, that without too much difficulty you can have your files checked further to see whether there are any other data there which we might look at tomorrow?

A. Yes, I will do that; but I know that there is a good bulk of it right in that pocket.

* * * * * * *

[fol. 2809] (1852) Mr. Graubard: Your Honor, may I say, preliminarily, that we have made a request through you of Mr. Adams, counsel for the Murchisons, which request was made some time ago, in regard to requesting I.D.S.—which his clients control—to produce certain monthly reports and other statements of I.D.S. for the years 1949, 1950.

Mr. Adams stated that he would take that request under consideration.

I should like to know at this time, sir, since Mr. Crowley, Mr. Adams' associate is present, whether (1853) or not [fol. 2810] that request will be granted.

The Referee: Can you answer that, Mr. Crowley.

Mr. Crowley: My recollection was that Mr. Adams said that he would take the request under advisement, and as of this moment, Your Honor, I do not know anything further beyond that.

The Referee: Take it up with him during the recess.

Mr. Crowley: He will not be available during the recess, sir; he is not in the office.

The Referee: How about during the lunch hour?

Mr. Crowley: That I will endeavor to do, sir.

The Referee: All right.

Mr. Graubard: I want to advise the court, too, that we have received the cooperation of Mr. Martin and Mr. Wallace in having certain files previously requested by us made available, and that we have spent a day and a half going through these files, with additional files still to be reviewed; and I hope that we will be able to review that after the determination of today's (1854) hearing.

[fol. 2811] Mr. Bijur: On behalf of Mr. Kahan and myself I would also like to acknowledge that Mr. Martin was kind enough to produce some large files in response to the subpoena that Mr. Kahan had served, and that we were examining those at the same time.

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[fol. 2812] (1915) By Mr. Graubard:

Q. Can you tell the court if there are any records in the Alleghany file room pertaining to I.D.S. transactions for the years 1949, 1950, 1953, and 1954, other than those already produced for the examination of counsel in this case, meaning the objectants' counsel in this case?

The Referee: Yes or no.

A. No.

Q. Have you made a search?

A. I have had a search made. I have not, personally, [fol. 2813] (1916) made a search.

Q. Who made the search?

A. Our file clerk.

Q. One clerk?

A. One clerk.

Q. What is his name?

A. Frank Hurbant.

Q. Do you know how long a period of time he spent in making this search?

A. I haven't the slightest idea.

Q. Did he advise you as to which files he searched through?

A. I said to him, "Look through the files." I did not say, look through file number so and so.

Q. Did you supervise his search?

A. I certainly did not.

Q. Are you satisfied that there are no more records, other than those produced, based upon his search?

A. I am satisfied that there—I don't know that there is something missing, because I cannot find two documents. I cannot find the Shipman—one document, the Stiver report, I am having trouble locating; (1917) and I am satisfied to [fol. 2814] that extent, that it must be there some place.

Now, it could be that it has been misfiled; it could be that it is out of the files for some reason; but I will get a copy of that document.

The Referee: (To Witness) Otherwise, Mr. Wallace, you are satisfied that a diligent search was made?

The Witness: I am satisfied that everything has been produced that is relevant here.

The Referee: If you can answer "yes" or "no" try to do so, Mr. Wallace, because it saves a lot of time.

The Witness: All right, Your Honor.

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[fol. 2815] (1968) Mr. Graubard: Mr. Martin would like to make a statement first, Your Honor.

The Referee: All right, Mr. Martin.

Mr. Martin: Your Honor please, I would like to have the record show that on Friday, November 11th, Monday, November the 14th, and, again, last night, about 18 files of Alleghany were produced for examination by the attorneys here and, also, certain additional papers.

The attorneys who examined the files are Messrs. Graubard, Phillips, Bijur, Kazan, Kahan, Lichtenstein and Herts.

Among the papers examined were the financial statement of Murchison Brothers, dated June 30, 1955; the financial statement of Murchison Brothers, dated December 31, 1954; and the balance sheet of Murchison Brothers as of June 30, 1954.

Mr. Graubard asked me to take out of the files quite a few of the papers for his use here this morning, and I have those papers before me.

Mr. Bijur: If Your Honor please, I believe Mr. Martin has separated a group that was requested and examined by Mr. Kahan and myself alone; and (1969) another group [fol. 2816] that was examined and requested by Mr. Kahan and myself and Mr. Graubard.

I believe he will mark them as one group.

I believe they come from one file; and I would like to have that identified—that is, the file.

Mr. Haudek: Your Honor, I did not understand that there was to be a stipulation concerning any of these exhibits.

I thought the exhibits would be offered and—

Mr. Bijur: You can leave that off the record. The stipulation relates to other exhibits, Mr. Haudek.

Mr. Haudek: Well, any exhibits—

Mr. Bijur: Not with respect to this group.

Mr. Haudek: I would like to reserve my right to object to any exhibit if it is wholly irrelevant to the case.

Mr. Daly: Yes; and I wish to say that I had no stipulation either.

Mr. Martin: All I said was that they asked to have certain papers taken out of the file.

[fol. 2817] (1970) I took those papers out, and the papers are here for their use this morning.

The Referee: Are those papers to be offered in evidence?

Mr. Martin: We do not know.

Mr. Graubard: Yes, sir.

Mr. Crowley: If they are being offered in a group, Your Honor, I wish to say that I have objections to about seven or eight of those documents which are to be offered, and I would like to be heard with respect to them.

The Referee: We will ask the question first.

Are they to be offered in a group, or individually?

Mr. Graubard: I will offer them individually, sir.

Mr. Bijur: As to those that I am interested in, I agree to that.

The only reason I mentioned a group was because I believe they come from a particular folder, and I wanted that folder identified with reference to that group of exhibits, even though they may be marked separately.

[fol. 2818] (1971) The Referee: We have your position on the record, Mr. Bijur.

Mr. Bijur: Thank you, Your Honor.

Mr. Graubard: I might note that Mr. Martin misspoke himself slightly in regard to designating Mr. Phillips as an attorney.

Mr. Phillips is not a member of the bar.

Mr. Phillips: Nor did Mr. Phillips see 18 files.

Mr. Graubard: We do not know exactly how many files we saw; we saw a great number of files.

Mr. Phillips: I saw four, to be specific.

The Referee: It is a complimentary statement, if anything, is it not?

Mr. Phillips: That is right.

Mr. Martin: I should like to point out that those 18 files are still here and available for examination.

The Referee: All right.

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[fol. 2819] (2182) Mr. Wallace: We have rented this room for tomorrow so that it will be available should anyone desire to use the files.

The Referee: This room was rented by Mr. Wallace in order to give all those who might be interested the courtesy of examining the Alleghany records and the exhibits, which exhibits will be found in the cabinet.

You will have all day tomorrow in which to do this, if you so desire.

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[fol. 2820] (2195) Mr. Graubard: Yesterday, during the day, Alleghany Corporation made available for our inspection certain files, and I would like to have a list of these files read into the record, which were thus opened to us.

May we have Mr. Phillips give that presentation?

The Referee: Yes.

Mr. Phillips: I examined with Mr. Martin yesterday four files, labeled "Alleghany—Exchange of Series A—1955"; each of the four files had that legend.

I also examined the file entitled, "Phillips versus United States of America"; one file.

Mr. Wallace advised me that that file is incomplete, that all documents, I think since July, 1955, in that matter, relating to it, were withheld.

I think he will want to explain why he withheld them, and we would like to see the documents in the file.

We also examined a file labeled "Alleghany— (2196) [fol. 2821] Special Stockholders' Meeting—February 8, 1955"; one file, so marked.

I also examined a file labeled "6% preferred convertible stock"; one file.

I also examined three files labeled, "I.C.C.," with different legends.

The first I.C.C. file carried the legend, "Louisville & Jeffersonville Bridge Railroad Company"; the second file carried the legend, "Louisville & Jeffersonville Orders"; and the third file carried the legend, "Louisville & Jeffersonville Correspondence."

Each of those legends were preceded by the abbreviation "I.C.C."

Those are the only files examined yesterday.

In the course of the examination it became apparent that the Louisville & Jeffersonville Bridge files are incomplete in the sense that apparently the New York Central Railroad has the basic documents in this file; and this, Your Honor, was the file that related to the application before the Interstate Commerce Commission in (2197) which New York [fol. 2822] Central and Alleghany Corporation joined, and which led to the orders that the three-judge court last Friday declared null and void.

There are other documents which may relate to these matters, but which are in other files. I have not had time to collect all the cross references, but I will do that shortly.

Is that correct, Mr. Martin?

Mr. Martin: You have partly correctly identified the files.

I might mention that, all told, a total of 23 files have been made available by Alleghany Corporation for the examination, together with certain other documents.

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[fol. 2823] (2352) Mr. Graubard: May I also note that we would like some arrangements made for access to the files and, also, for photostating of documents, exhibits in the files.

May we have a determination on that at this time, Your Honor?

The Referee: The files are open for your inspection, Mr. Graubard.

Mr. Graubard: Will they be available?

The Referee: Certainly all day tomorrow, when we will

not have a hearing; I think they should be open all day Saturday to you. I will not ask anybody to work on Sunday.

Mr. Graubard: That is right; I understand.

The Referee: But tomorrow and Saturday (2353) you [fol. 2824] should be given an opportunity to inspect them, and in the event you want to photostat something, there is no photostating equipment in the hotel, as far as I know.

Is there?

Mr. Graubard: I do not know.

The Referee: You may know that better than I.

Mr. Wallace: There is a photostating firm right in the neighborhood.

Mr. Graubard: If we could have some modus operandi worked out—

The Referee: Mr. Wallace will work that out for you.

Give him access to a room.

Mr. Wallace: I will get a room in the hotel, Your Honor.

The Referee: And you may have photostated any documents that you like, that have been marked in evidence.

Mr. Graubard: Thank you, Your Honor.

Mr. Bijur: Off the record, please.

The Referee: Off the record.

* * * * * * * *

[fol. 2825] (2607) Q. Did the S.E.C. also object to representations made by salesmen of I.D.S. and subsidiaries in selling these installment certificates to the public?

A. There is hardly a month that goes by, as I understand it, that they do not object to something that some salesman has said.

Unfortunately, when you have got 2000 men in the field, it is impossible to say as to what they say or do not say, and we have devised no way yet to control what they say.

Q. Of course. I again ask you, Mr. Young, was that issue resolved, or any issues, with respect to the selling of installment certificates by salesmen, resolved during the year 1949—and I will now add the year 1950.

A. As I stated before, and as I will state for the fourth time, I have no present recollection.

[fol. 2826] (2608) Q. Would you say that Mr. Purcell would have such recollection?

The Referee: Sustained.

Q. Are there any records in the company, in the I.D.S. company or in the Alleghany Company, Mr. Young, which would reveal that circumstance?

A. They would have to speak for themselves.

Q. I beg your pardon?

A. I say that the records would speak for themselves.

Q. The records that are not here, Mr. Young, the records in your company.

A. All you need to do is to request them, and we will supply them.

Q. If there are such records, Mr. Young, we do request them.

A. We will gladly—

Mr. Daly: Now, Mr. Lichtenstein, the files with reference to I.D.S., the Alleghany files with reference to I.D.S., have been available here for the last two or three weeks.

I do not think that you should now put the (2609) burden [fol. 2827] on us with respect to doing your work.

The Referee: I am not going to compel you to, either.

Mr. Lichtenstein: They are here, may we reserve our right to request—

The Referee: No, no.

You are going to finish now in the next five minutes.

Mr. Daly: They have been available for several weeks, to you and all other counsel.

Mr. Lichtenstein: I have seen—

The Referee: No, let us not have discussion on that.

Ask your next question.

Mr. Lichtenstein: Then that is all, Mr. Referee. Thank you very much, sir.

The Referee: You are quite welcome.

All cross-examination on I.D.S. is completed except as to Mr. Graubard covering certain parts of it, the parts that he desires to cover.

[fol. 2828] (2655) Mr. Graubard: May we have produced, so that they may be available during this examination, the Purcell files and the Young files, which were hitherto made available to us.

[fol. 2829] (2656) I want to note for the record, Your Honor, that counsel for Mr. Young made available to us Mr. Young's personal files relating to the 1950 I.D.S. transaction, and that we have had the benefit of going through those files.

[fol. 2830] (2657) Mr. Graubard: I will accept that, Mr. Daly. But will you also agree with me that my requests went to Mr. Wallace, and it was Mr. Wallace, therefore, who must have told you about the 1950 I.D.S. file request.

Mr. Daly: It was Mr. Wallace who told me of the request for the 1950 information, and that was supplied to you, and you have had it for several days now.

[fol. 2831] (3069) Mr. Graubard: I want to point out to the court that it is now two o'clock and that, for the first time since March 30th, when these monthly reports were requested, they have been produced.

They apparently have been produced in the last half of the last day of the cross-examination of Mr. Young, and I want to say that if we have insufficient time to examine these records properly, giving them the care that they deserve, (3070) and then continue with the cross-examination [fol. 2832] of Mr. Young, we will have to ask for the continuance of this cross-examination.

The Referee: I will rule on that at the proper time, Mr. Graubard.

[fol. 2835] (3073) Mr. Graubard: Are there any other exhibits to be introduced at this hour, Mr. Daly?

Mr. Daly: Not at this moment.

As you make the requests, however, we will try to comply with them.

Mr. Graubard: Then let it appear on the records that I have requested—if not previously, then now—the monthly statements of I.D.S., commencing with the acquisition of control by Alleghany in 1949, through to the period of November, 1949.

Mr. Daly: I think that they are completely irrelevant. I am not going to try to get them.

Mr. Graubard: I also request any monthly statements or any statements not already in evidence, to which Mr. Young had access during the period in question.

I am referring now to the statements concerning which my friend, Mr. Pomerantz, took (3074) Mr. Young's depo-[fol. 2836] sition on, in March of 1955, March 29 and March 30, 1955.

Mr. Pomerantz: Mr. Young, I take it, had access to millions of documents, so your description is rather vague.

Would you mind breaking it down more specifically, Mr. Graubard?

Mr. Graubard: Are you asking this on behalf of Mr. Young, Mr. Pomerantz?

Mr. Pomerantz: You just looked at me and asked me as if I knew what you are talking about.

What do you mean by documents that during my examination of Mr. Young Mr. Young had access to, Mr. Graubard?

I am asking you that question so that you and I will understand what you have reference to.

Mr. Graubard: I am referring to Plaintiffs' Exhibit 4, specifically the questions directed by Mr. Haudek to Mr. Pomerantz to Mr. Young, referring to monthly statements and certain other statements, the answers of Mr. (3075) [fol. 2837] Young in regard to the production of such statements, with interpolations by Mr. Wallace in regard to assisting in the production of such statements.

Mr. Daly: I think I have produced everything that I am going to produce.

The Referee: The request has been made, and it has been addressed to the proper persons, and they may act in accordance with the request.

If they have that material, and desire to produce it, they may produce it. The Referee, however, will not order any more exhibits than have already been ordered.

Proceed with your cross-examination, Mr. Graubard, of Mr. Young.

Mr. Graubard: You understand, sir, that this request for the production of these documents was made by me weeks ago.

The Referee: I do.

Mr. Graubard: And repeatedly.

The Referee: Yes; I understand.

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[fol. 2838] (3476) The Referee: On arriving at my office this morning I found on my desk a letter dated December 22, 1955, written to me by Seymour Graubard of the firm of Graubard & Moskowitz.

In that letter Mr. Graubard makes two requests of me:

In his first request he asks that I direct proponents to produce Messrs. Kirby, Purcell and Anzalone as witnesses; [fol. 2839] or, in the alternative, (3477) he asks for other relief.

That request is denied. It is a repetition of what has already been orally requested of me on a prior date.

He requests, likewise, that the Referee recess all further hearings pending acknowledgment to the court that Mr. Kirby, Mr. Purcell and Mr. Anzalone will be available as witnesses.

I hereby refuse that request. That application is denied.

I will have the letter marked as a Referee's exhibit for identification only.

(Letter above referred to, submitted by the Referee, on the letterhead of Graubard & Moskowitz, 115 Broadway, New York 6, N. Y., dated December 22, 1955, addressed to Hon. Robert J. Fitzsimmons, Referee, 654 Madison Avenue,

New York 21, N. Y., re: Zenn, et al. vs. Anzalone, et al., consisting of five pages, signed, "Seymour Graubard," was marked Referee's Exhibit F for identification, as of this date.)

The Referee: All right, gentlemen, let us (3478) proceed. [fol. 2840] Mr. Graubard: I have tried to ascertain, sir, when Messrs. Kirby, Anzalone and Purcell would be within the jurisdiction.

To that effect I have made inquiry of the proponents for the settlement through Mr. Wallace.

As of the end of last week I was able to receive no further information, either positive or negative, with respect to that point.

I would like to repeat my inquiry through you, sir, to determine whether or not any of these gentlemen is or may be in the jurisdiction this week, and ask whether the proponents can answer that question for us.

Mr. Daly: As far as I know, I do not know, Your Honor.

I may say that I interviewed Mr. Kirby's doctor during the recess last week, and I was assured by the doctor that Mr. Kirby's condition is such that it would, in the doctor's opinion, seriously endanger his life, if he testified.

In view of that I certainly have no intention (3479) of [fol. 2841] calling Mr. Kirby.

I will say that I do expect to have the doctor here tomorrow to testify personally; and, of course, he will be subject to cross-examination by the opponents of the settlement.

I have already stated my position with respect to Mr. Purcell and Mr. Anzalone, and I will not repeat it at this time.

The Referee: Except to say that you will not produce them.

Mr. Daly: I will not, sir; and I have said that before.

Mr. Graubard: Can you advise us as to when Mr. Purcell is expected to return from South America?

Mr. Daly: No, I cannot; I do not know.

Mr. Graubard: Can you advise us as to where we can ascertain that information for ourselves?

Mr. Daly: No; I do not know.

Mr. Graubard: Can you tell us the source of your information that he is in South America?

Mr. Daly: I prefer not to disclose my information.

[fol. 2842] (3480) Mr. Graubard: May I assume that this response would also be applicable to Mr. Wallace and all of the other proponents of the settlement.

Mr. Daly: Yes.

I do not see why he should be cross-examined.

You can make your own inquiries.

Mr. Kahan: Mr. Referee, may I inquire as to whether Mr. Daly's statement with regard to Mr. Kirby's health has to do with respect to taking his deposition, or does it have to do with testimony?

The Referee: You can discuss that fully during the recess.

Mr. Daly: I will answer that.

His health is such that he should not be subjected to any examination.

Mr. Kahan: In or out of court?

Mr. Daly: In or out of court.

Furthermore, based upon my examination of the doctor, I assume that the doctor will so testify tomorrow.

Mr. Graubard: You would not be prepared to state, however, Mr. Daly, that Mr. Kirby would subject himself to a medical examination by a (3480) physician appointed [fol. 2843] by the court?

Mr. Daly: If the court so ordered, I am sure that Mr. Kirby would comply with it.

I have not asked Mr. Kirby that fact.

• • • • • • •

[fol. 2844] (3662) Q. Doctor, do you have an opinion as to whether or not Mr. Kirby's life would be endangered if he testified in any proceeding?

A. Yes, not only this proceeding, any proceeding.

Anything that would really irritate this fellow would endanger his life, because of the damage it would do to this heart.

Q. Do you think that if he testified, it might result in this death?

A. The result, in coronary, can; may ultimately result in death.

Q. And that would be whether he testified here in this room or testified at home, or testified any place else.

Is that right, Doctor?

A. I agree with that. No matter where he testified, I think he is endangering his health.

[fol. 2845] (3663) Q. Do you think he would be endangering his life?

A. I do.

Mr. Daly: That is all.

Mr. Graubard: If Your Honor please, I would like a five-minute recess.

The Referee: No. Let us get along.

Mr. Graubard: I have an expert here, D. Harry Gross.

The Referee: You may talk to him here.

This is not of such grave importance that we need a recess. I will give you a moment or so while you talk to him, but we do not need a five-minute recess.

Mr. Graubard: May I ask, sir, the purpose of offering this doctor's testimony?

The Referee: Do you want to answer the question?

Mr. Daly: I want to show the court that it is impossible to call Mr. Kirby as a witness.

Mr. Graubard: I would like to ask now of Mr. Daly through you, sir, whether if the (3664) court determines [fol. 2846] that Mr. Kirby can be examined, that he will make him available for examination?

Mr. Daly: My answer to that is, first, that I am not Mr. Kirby's attorney. I cannot speak for Mr. Kirby.

Secondly, if his doctor testifies that it would endanger his life, I am not the one to make the decision as to whether or not he should testify.

Mr. Graubard: I submit, sir, that this entire line of questioning is irrelevant, is done without the purpose of aiding this court in any way, and probably is intended for use in some other court or judge.

I ask that the witness's testimony be stricken in its entirety.

The Referee: That motion is denied.

Is there any cross-examination?

Mr. Graubard: Yes.

• • • • • • •

[fol. 2847] (4049) Mr. Graubard: Did you ever give Alleghany Corporation, or did your firm give Alleghany Corporation, a receipt for any documents received from the Corporation?

[fol. 2848] (4050) Mr. Daly: Not that I recall.

There were hundreds of documents, Mr. Graubard, maybe thousands; I do not remember.

Mr. Graubard: Were there any documents that you made available to Mr. Pomerantz, or any of his associates, other than those which were marked in evidence in the course of the depositions taken of Mr. Wallace and of Mr. Young, in March of this year, in the Southern District Court action, prior to April 18, 1955?

Mr. Daly: There certainly were.

Mr. Graubard: To the best of your ability, Mr. Daly, please tell the court what these documents were.

Mr. Daly: I could not; it is impossible.

Mr. Graubard: Can you tell the court what these documents were not, by any means?

Mr. Daly: I could not.

• • • • • • •

[fol. 2849] (4266) Mr. Graubard: I now refer back to your testimony this morning, Mr. Pomerantz, in regard to the exhibits which were either seen by you or not seen by you, prior to April 18, 1955.

In the course of your examination of the documents of Alleghany Corporation, Mr. Pomerantz, did you have occasion to look at various files that were made available to you?

Mr. Pomerantz: I do not know what you mean; I do not distinguish documents from files, in my own mind.

Mr. Graubard: I am referring now to a drawer full of records that are physically collected under a heading that may be contained in a filing cabinet.

Mr. Pomerantz: As I recall it—so that I do not fence with you, Mr. Graubard—when I came into Lord, Day & Lord's office there were (4267) piled up for me on a small [fol. 2850] library table, often at a height of two or three feet, a stack of documents which I had requested.

Now, whether these papers came out of a steel cabinet or not, I would not know.

Mr. Graubard: Were those papers collected in envelopes, in brown manila envelopes, or white manila envelopes?

In other words—

Mr. Pomerantz: My best recollection is that they were not.

They were opened as a stack of papers, that are open in front of you right now, Mr. Graubard.

Now, I do not testify that there might not have been some envelopes there.

Mr. Graubard: There were no papers there indicating which of the files of Alleghany those papers came from?

Mr. Pomerantz: If there was, I paid no attention to it.

When I asked for papers on the I.D.S. cause of action, they were put in front of me, I looked (4268) at them, I [fol. 2851] examined them, and I made my notes, I said, "Thank you," and I went home or back to my office.

I did not look to see what files they came out of, no.

Mr. Graubard: Are you referring now to papers which were shown to you pursuant to the request made by you or Mr. Haudek at the depositions taken of Mr. Wallace and Mr. Young?

Mr. Pomerantz: No; as I have already testified, Mr. Graubard, the great volume of our document searching occurred prior to my examination of Mr. Young; and, as you will see from the reading the depositions of both Mr. Wallace and Mr. Young, I made frequent reference to documents that had been given to me prior to that time.

. . . . . .

[fol. 2852] (4284) The Referee: I will ask Mr. Pomerantz
[fol. 2853] (4285) that question.

What are the documents in your office that pertain to this particular lawsuit?

And that will end the questions along this line.

Mr. Pomerantz: Very good, sir.

In the first place, there was the huge pile of documentation, which has been put in evidence in this case. That is number one. I am talking about the exhibits here, the documents that were marked as exhibits here. They were out of our files.

May I go on?

Mr. Graubard: You are referring to the exhibits that you offered in evidence?

Mr. Pomerantz: That is right.

Mr. Graubard: And is it your testimony—

Mr. Pomerantz: I am not through with my answer to His Honor's question. I would appreciate it if you would permit me to finish my answer.

Mr. Graubard: I am referring, sir, if you recall, to items before April 18, 1955.

[fol. 2854] (4286) Mr. Pomerantz: I am answering the question.

The Referee: I asked the question, and I am going to get an answer. I do not want you to interrupt Mr. Pomerantz while he is answering the question.

Go ahead and give the answer.

After this answer is given there will be no more inquiry into any more sources of his information, and how he relates it. We have gone far enough with that.

Mr. Pomerantz: In the second place, Your Honor, I have in my file abstracts of information given to me by certified public account Eric Klinger, representing the fruits of his research, and that does take several forms.

It is suggestions for further inquiry in depositions, it is the actual putting in front of me of physical documents or photostats which he has procured, let us say, at the Securi-

ties and Exchange Commission or at the standard statistical service record libraries, and things of that kind.

[fol. 2855] (4287) In the third place, I have papers which he saw, and, for one reason or another, did not put into evidence in this proceeding.

I might add that we showed your associate, Philip Kazon, in my office, and at your request, a folder of papers containing such additional material as he secured from the defendants, and which we did not put into evidence here, so that you could ascertain what things we excluded from the reference, as was implied in your question.

Finally, my file consists of certain legal memoranda with respect to an evaluation of certain aspects of this lawsuit, in terms of probable recovery or improbability of recovery; and a lot of looseleaf notations of my own research and Bill Haudek's research, with regard both into the factual and legal aspects of these litigations; and, of course, there is also—and it is obvious, and so I do not bother dwelling on it—the usual litigation papers which, in this case, as you must know, are very extensive because of all the litigation and pre-trial (4288) background of the situation.

[fol. 2856] Now, Your Honor, I do not know that I have exhausted all categories. I think we have 20 or 30 files in our office, Mr. Graubard, relating to this lawsuit, and if I have not exhausted all of the categories of types of documents and papers we have, I would like the privilege, when I consult with my associates, and look at the records, to amplify my answer.

* * * * * * *

[fol. 2857] (4426) Mr. Graubard: In so far as you know, Mr. Pomerantz, all the relevant material that you had in your possession was presented in the course of this hearing?

Mr. Pomerantz: I would say that all the relevant non-cumulative material was presented, yes.

In other words, if we had the same information in four or five different forms from the S.E.C., from standard corporation libraries, and from an exhibit produced on an ex-

amination before trial, we would probably choose one of those items and ignore the others.

Mr. Graubard: In the course of your investigation of that first cause of action, Mr. Pomerantz, did you take any steps in order to determine whether Mr. Young had an intimate knowledge of the affairs of I.D.S., during the latter part of 1949 and the early part of 1950?

Mr. Pomerantz: Yes. You will find our examinations [fol. 2858] (4427) before trial, both of Mr. Wallace and Mr. Young, contain interrogations bearing on that subject.

Mr. Graubard: Did you obtain any written data in connection with the investigation you made?

Mr. Pomerantz: Obviously I have already testified we obtained a considerable amount of documentation with regard to the Young-Kirby-I.D.S. cause of action, which you denominate as the first cause of action; we obtained piles of it.

Mr. Graubard: Can you tell the court, Mr. Pomerantz, whether you had any data documentation, other than your deposition taken of Mr. Young, in regard to Mr. Young's knowledge of I.D.S. affairs during the period in question?

Mr. Pomerantz: I have no specific piece of paper in mind which bears on Mr. Young's knowledgeability as to the affairs of I.D.S. at the period you are inquiring about, beyond such items—if any—that may have . . .

. . . . . .

[fol. 2859] (4613) Mr. Graubard: Your Honor, we wrote [fol. 2860] (4614) to you shortly after the medical testimony concerning Mr. Kirby, with copies to counsel here, and in such letter we requested, in view of the nature of the medical testimony given, that you reconsider your prior ruling in regard to directing the proponents to produce Mr. Kirby to testify at this hearing.

As yet we have not received Your Honor's ruling in regard to this request.

The Referee: I will give it to you right now, Mr. Graubard.

On the state of the record, your application is denied.

Mr. Graubard: We wish to further call Your Honor's attention to the fact that there may be a ruling by the Court of Appeals, Second Circuit, shortly, in regard to Mr. Kirby's giving a deposition in the Federal Court Breswick versus Briggs' action, and that that may take place shortly.

Should that occur in that way, we would request Your [fol. 2861] (4615) Honor's permission to advise him of that and ask for a reopening of that question.

The Referee: It all remains for the future. All applications along that line are disposed of.

Do you have anything further at this time, Mr. Graubard?

Mr. Graubard: We rest, sir.

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106—Subpoena Duces Tecum, Blank Court.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
71 BROADWAY, AND 1 RECTOR ST., NEW YORK

The People of the State of New York

TO Allegheny Corporation, 630 Park Avenue, New York, N.Y.

GREETING:

We command you, That all business and excuses being laid aside, you appear and attend before Honorable Robert J. Fitzsimmons, Referee designated by order of the Supreme Court of the State of New York, New York County

at Room 605 (Byrne Room) Bar Association of the City of New York

on the 3rd day of November 1955 at 10:30 o'clock in the forenoon, to testify and give evidence in a certain action now pending in the said Court, then and there to be tried between Sadie Zenn et al

plaintiffs

and J. J. Ansalone et al

defendants

on the part of the said plaintiffs and that you bring with you, and produce at the time and place aforesaid, a certain

All files, papers and documents relevant to the "First" and "Second" causes of action set forth in the consolidated amended complaint: Index No. 7244/1954, more particularly referring to the transactions alleged therein relating to the Investors Diversified Services ("IDS") stock transactions for the periods 1949 through 1955 inclusive.

[fol. 2862]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-356

now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises. And for a failure to attend, you will be deemed guilty to a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit Fifty Dollars in addition thereto.

Witness, Honorable Owen McGivern one of the Justices of said Court, at New York City, N.Y. the 31st day of October 1955

ALEXANDER KAHEN, of Counsel

BLAIR & HERRS
Attorneys for Adelaide Neuwirth
(Office and Post Office Address)
20 East 40th Street, New York 16, NY

Referee

STATE OF NEW YORK, } ss.: AFFIDAVIT OF SERVICE ON INDIVIDUAL
COUNTY OF

being duly sworn, deposes and says,

that deponent is above the age of 18 years and resides at

That on the day of 19 at No.

deponent served the within subpoena duces tecum on the Witness therein named, by delivering to and leaving personally with said Witness a true copy thereof, and at the same time deponent tendered to and paid to the Witness $ that being the lawful fees to which said Witness was entitled for mileage and for one day's attendance: Deponent knew the person served as aforesaid to be the same person mentioned and described in said subpoena duces tecum as such Witness.

Sworn to before me this
day of , 19 .....

STATE OF NEW YORK, } ss.: AFFIDAVIT OF SERVICE ON A CORPORATION
COUNTY OF

being duly sworn, deposes and says,

that deponent is above the age of 18 years and resides at

That on the day of 19 at No.

deponent served the within subpoena duces tecum on

a corporation, by delivering to and leaving a true copy of said subpoena duces tecum personally with an officer of said corporation, to wit, its and at the same time deponent tendered to and paid to said officer $ that being the lawful fees to which said corporation was entitled for mileage and for one day's attendance: Deponent knew said corporation served as aforesaid to be the corporation mentioned and described in said subpoena duces tecum and knew said to be such officer thereof.

Sworn to before me this
day of , 19 .....

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SADIE ZEHN et al

Plaintiffs

against

J. J. ANZALONE et al

Defendant

Subpoena

Duces Tecum

BIJUR & HERTS

Attorneys for Adelaide Houndirth
(Office and Post Office Address)
10 East 40th Street, New York 16, N.Y.

Copy Received
Attorney
January 31, 1951 2 01 PM

To ILLEGIBLE CORPORATION

2096

[fol. 2864]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT KIRBY EXHIBIT No. K-357

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM PART I

SADIE ZENN, *et al.*,

Plaintiffs,

—against—

J. J. ANZALONE, *et al.*,

Defendants.

SAMUEL P. ROSEN,

Objectant.

MORRIS MILLER, C. S. R.
OFFICIAL REPORTER
NEW YORK SUPREME COURT
60 CENTRE STREET
NEW YORK 7, N. Y.

COrtlandt 7-3385

[fol. 2865]

SUPREME COURT : NEW YORK COUNTY

SPECIAL TERM, PART I.

SADIE ZENN, *et al.*,

Plaintiffs,

—against—

J. J. ANZALONE, *et al.*,

Defendants.

SAMUEL P. ROSEN,

Objectant.

New York, N. Y.,
December 28, 1959

Before:

HONORABLE OWEN MCGIVERN,

Justice.

MORRIS MILLER, C.S.R.,
Official Reporter.

[fol. 2866] Appearances:

POMERANTZ, LEVY & HAUDEK,
General Counsel for Plaintiffs,

by WILLIAM E. HAUDEK, ESQ.,
of counsel.

CHARLES T. IRELAND, ESQ.,
Attorney for Defendant Alleghany Corp.,

by CARL E. NEWTON, ESQ.,
DAVID TEITELBAUM, ESQ.,
ROBERT M. LOEFFLER, ESQ.,
of counsel.

SATTERLEE, WARFIELD & STEPHENS, ESQS.,
Attorneys for Murchison Defendants,

by F. W. H. ADAMS, ESQ.,
HENRY FORMAN, ESQ.,
WILLIAM E. STOCKHAUSEN, ESQ.,
of counsel.

GRAUBARD & MOSKOVITZ, ESQS.,
Attorneys for Samuel Rosen, Objectant,

by SEYMOUR GRAUBARD, ESQ.,
PHILIP KAZON, ESQ.,
of counsel.

ROSSTON, HORT & BRUSSEL, ESQS.,
Co-Counsel for Samuel Rosen, Objectant,
and also counsel for
BRESWICK & Co., and
MYRON NIESLOSS,
Proposed Intervenors,

by GEORGE BRUSSEL, JR., ESQ.,
of counsel.

CHESTER G. BOLLENBACH, ESQ.,
427 Bloomfield Avenue,
Montclair, New Jersey,
Stockholder and Objectant, Pro Se.

[fol. 2867] Appearances: (Continued)

ARTHUR W. LICHTENSTEIN, ESQ.,
Attorney for Adelaide Neuwirth,
Objectant,

by JACOB GRUMET, ESQ.,
ALEXANDER KAHAN, ESQ.,
HARRY BIJUR, ESQ.,
of counsel.

LORD, DAY & LORD, ESQS.,
Attorneys for Defendant Anita O'Keefe Young as Executrix of the Estate of Robert R. Young, Deceased, and Defendant Thomas J. Deegan, Jr.,

by THOMAS F. DALY, ESQ.,
SAUL L. SHERMAN, ESQ.,
of counsel.

DIGGINS, BOYCHUK & ENGEL, ESQ.,
Attorneys for T. Ruppert Brown, Plaintiff,

by JOSEPH M. BOYCHUK, ESQ.,
of counsel.

MORRIS J. LEVY, ESQ.,
261 Broadway
New York City,
Attorney for Plaintiff Monheit in U. S. District Court, Southern District of New York.

BATTLE, FOWLER, NEAMAN, STOKES & KHEEL, ESQS.,
477 Madison Avenue,
New York City,
Attorneys for Clarence W. Bailey, Plaintiff-Intervenor,

by HYMAN L. BATTLE, ESQ.,
of counsel.

[fol. 2868] Appearances: (Continued)

DANIEL JACOBS, ESQ.,
111 Broadway,
New York City,
Co-Counsel for Myron Niesloss, Plaintiff-Intervenor.

DANIEL W. BLUMENTHAL, ESQ.,
Co-Counsel with

Pomerantz, Levy & Kaudek
(for Plaintiffs Blumenthal),

by NORMAN DUBIN, ESQ.,
of counsel.

ARTHUR SCHENKEIN, ESQ.,
111 Broadway,
New York City,
Attorney for Anna Endelman and First National City Trust Company, Executors under Will of Edward Endelman.

(Edward Endelman, deceased, formerly attorney for Sadie B. Unger in the Federal consolidated action).

[fol. 2869] The Court: All right, gentlemen, I assume that every lawyer present has noted his appearance with the reporter. In order to save the time of any attorney who may or may not be interested in the two orders before me I would like to announce this, that as you know, the last contact this Court had with this proceeding was on March 12th, 1959, when I approved the settlement recommended by the Referee, but suspended the entry of an order of confirmation pending the vacature of the Federal Court injunction, dated October 27th, 1955.

Since then there has been a number of developments and my main source of information frankly has been the New York Times, but I gather that these settlements have been considerably augmented.

If there is any attorney who has any objection to the proposed settlements which are now before me I would like to know it and if there isn't I will proceed with a considera-
[fol. 2870] tion of the orders. Yes, sir?

Mr. Bollenbach: My name is Chester G. Bollenbach, and I am the only stockholder that opposed the entire transaction of the Investors Syndicate deal with Alleghany Corporation at the annual stockholders' meeting in Baltimore—

The Court: Well, now—

Mr. Bollenbach: And I am opposed to any settlement in this matter.

The Court: All right, we will notice your objection. There being no other objection, the Court has had a request from Mr. Adams that there be a short recess while he confers with some of the other attorneys regarding some minor changes, so we will stand in recess for fifteen minutes.

Mr. Adams: I think we will talk it out close to that time, your Honor.

The Court: Very good.

(Short recess taken.)

[fol. 2871] Mr. Teitelbaum: May it please the Court, in accordance with the suggestion which Mr. Adams made just before the recess, which turned out to be a rather long fifteen minutes, I am afraid, we have had a meeting and we have discussed and satisfactorily arrived at a solution to that one important matter which divided us in regard to the second order which will be submitted to your Honor, and that having been satisfactorily disposed of, we are all agreed that this Court now shall proceed with consideration of what I may call the Kirby order for settlement of the case here as regards him and that after we have disposed of that it will be appropriate to submit to your Honor the order in regard to the settlement with respect to all other defendants.

There are some additional, though not significant, terms to be put upon the record in regard to the Kirby order but one or two of the gentlemen here have asked that before I proceed with the substance of those additions that they [fol. 2872] be given an opportunity to address the Court in regard to some preliminary matters which they have and if that is agreeable to your Honor, I will defer that statement.

The Court: Very good.

Mr. Brussel: Your Honor, I appear here as counsel for Breswick & Company and Myron Niesloss, who are the

plaintiffs in the Federal Court action in which the supplemental proposals were produced and are now being proffered to this Court, and for all substantial purposes our role in the Federal Court is ended, and on consent of the defendants in this case, the order will be presented to your Honor in connection with aspects of the settlement not related to the Kirby settlement in which your Honor will be asked to direct that we are allowed to appear as plaintiffs-intervenors for the purpose of enforcing the settlements that have been concluded, and so that I may be able to address the Court in that capacity I am informally apply-
[fol. 2873] ing then in court now for leave to intervene as plaintiffs-intervenors, that is, Breswick & Company and Myron Niesloss as plaintiffs-intervenors for the purpose of enforcing the proposed settlements that are about to be offered to the Court.

The Court: For that limited purpose I can conceive of no objection, so I grant your motion to intervene; for that purpose.

Mr. Brussel: Thank you, sir, and in support of that, just for the record, I will before four o'clock today hand up a brief so that will be part of whatever judgment roll will be entered in this case.

[fol. 2874] Mr. Bijur: If your Honor please, on behalf of the stockholder Adelaide Neuwirth, as the record shows, Adelaide Neuwirth appeared through my associates and myself at the commencement of the hearings before the Referee at the same time that Samuel Rosen appeared and with Messrs. Graubard & Moskovitz representing Rosen, we represented Neuwirth in opposition to the settlement as it stood at that time. Both objectants were fully heard, participated in all the proceedings, but we were objectants responding to the order of the Court directing a hearing, in effect, an order to show cause, and in order to be in the same position that Mr. Brussel deems advisable, and I am in agreement with him, I think I should apply and ask your Honor to be allowed to intervene as intervening plaintiffs in the action, for the record.

The Court: I grant the motion.

Mr. Brussel: I neglected to include within the scope of my motion as the intervention of objectant Rosen that he [fol. 2875] has heretofore been in this action solely as an objectant and not as an intervenor; and the plaintiff Clarence W. Bailey, who was co-plaintiff with Breswick & Company and Myron Niesloss in the Federal Court, seeks the same relief, and I so apply.

The Court: So understood.

Mr. Teitelbaum: If your Honor please, addressing myself to the order settling this case as regards the defendant Kirby, the order itself which is before you is a result in part of the discussions which we have had and the further opportunity that those here have had to examine this proposed order since it was served on all parties Thursday last.

There are one or two changes that I would like to make a part of the record. There is first a suggested deletion of Paragraph 6 of the order as submitted for settlement and the insertion in lieu of that Paragraph 6 that is now in the order a new Paragraph 6 which reads as follows:

[fol. 2876] "6. ORDERED, that the judgment of dismissal as to defendant Allan P. Kirby provided for in paragraph 3 hereof shall provide for the reservation of jurisdiction of this Court for the purpose of enforcing any obligation of defendant Allan P. Kirby"—

If your Honor wishes, here is a copy of what I am reading, if I may hand it up.

"pursuant to paragraph 2a or 2b (as the case may be) of the Supplemental Stipulation of Settlement and for the purpose of enforcing paragraph 10 and all other provisions of the Supplemental Stipulation of Settlement, a copy of such Supplemental Stipulation of Settlement being attached hereto and made a part hereof, and defendant Allan P. Kirby having consented in open court upon the settlement of this order to the jurisdiction of this Court for the purpose of enforcing the aforesaid Supplemental Stipulation

[fol. 2877] of Settlement and the provisions of this order."

The intent and purport of that clause, your Honor will see, is to reserve the jurisdiction of the Court in the enforcement of the settlement and it is to submit the defendant Kirby to the jurisdiction of the Court for the purpose of enforcing that settlement, he not having heretofore appeared either generally or specially in this action.

I have handed up to your Honor a form of order which is identical with the form of order previously submitted except that paragraph 6 in the new order is as I have just read it in lieu of the old paragraph 6 and I would suggest respectfully to your Honor that the formal order which I have now handed up be the one that your Honor sign in due course.

There are one or two other points which we have agreed among ourselves need not be made a part of the written order which your Honor is about to sign, I trust, but that [fol. 2878] it be stated upon the record as being an essential part of the disposition of this matter by your Honor today.

(After a short pause.)

[fol. 2879] Mr. Teitelbaum: In lieu of adding a further provision of the order that I had formerly anticipated might be necessary, it is understood now and I am asked to stipulate for the record, that plaintiffs and their counsel and accountant and objectant Rosen and his attorneys, the Breswick plaintiffs and their attorneys, the financial consultant to the Breswick attorneys and objectant Rosen, and all other attorneys for stockholders who may be entitled thereto may apply at the foot of the final judgment to be entered herein for an allowance of expenses and reasonable counsel, accountants' and consultant fees to be paid by Alleghany Corporation for services rendered to Alleghany Corporation and its stockholders in this court and other forums with respect to the matter alleged in the consolidated amended complaint herein, and Robert J. Fitzsimmons may apply for an allowance for his services

as Referee following the entry of this order. I so stipulate, your Honor.

[fol. 2880] I take it, your Honor, that as a matter of law the Court reserves jurisdiction so that any party may apply to the Court on notice to amend or supplement the order for the purpose of affectuating its provisions.

The Court: Yes, that was so indicated in my original memorandum.

Mr. Adams: I quite agree, your Honor. I think, however, that as a matter of substance that provision should be added at the foot of this order and if your Honor please, I have before me a suggested two or three lines which would cover it which merely says that at the very end of the order it would say: "Ordered, that any party may apply to the Court," I have written here "upon five days' notice" but whatever your Honor might think reasonable, "to amend or supplement this order for the purpose of affectuating its provisions."

Mr. Teitelbaum: I cannot agree to that, your Honor, [fol. 2881] because I don't quite know what it means, beyond what the Court has the power to do in any event and therefore I do not consent to it.

Mr. Adams: You see the difficulty, Judge, as I understand the practice here where you have to move to resettle the whole order, you can only do that within a time limited under the rules, I forget what the number of days is, but it is four or five days in which we have to move to resettle the order, and situations may develop here in working this out so that it may be necessary for us to amend the order and it may be necessary for Mr. Teitelbaum or any other party, and that is why I wanted it in here now so we wouldn't be bound by the rule relating to resettling the order.

The Court: How would this line really differ from yours? His amendment is only for the purpose of effectuating the provisions of the order.

Mr. Teitelbaum: Well, I take it there is no difficulty [fol. 2882] about that as a matter of law, but I am a little

surprised to see Mr. Adams insisting that it go into the order, in view of the fact that I have understood he was going along with the order at this point.

Mr. Adams: I am. The difficulty in this point, Mr. Teitelbaum, is that the rules of this court provide if you want to change an order after it has been signed you can only do it by resettlement, and the only way you can resettle an order is, I think, I am not sure of the number of days, but I think you can only resettle within five days. If we had to change this order at some later time we couldn't do it because the time for resettlement would have been passed.

The Court: I really don't think you are prejudiced.

Mr. Teitelbaum: There is one further insert in paragraph 3 which your Honor can insert in pen and ink, I [fol. 2883] believe; it is only a few words in the third line of paragraph 3 which read:

"A judgment be entered herein." After the word "herein," insert "severing and continuing this action as to all defendants other than defendant Kirby."

There is some question here as to whether a judgment of dismissal as to Kirby might not otherwise carry with it some dismissal as against other parties, unless this language were inserted, and that is why its insertion is suggested.

The Court: Very well. All right, gentlemen, it appears to me that the Federal order previously obtained has been vacated as to the defendant Kirby by the order of Judge Dimock signed on December 24th, 1959, and therefore there is no longer any impediment to my approving this settlement as to the defendant Kirby, and I will sign the order before me.

Mr. Adams: In the respects as amended, your Honor?

[fol. 2884] The Court: As amended.

(Discussion off the record.)

The Court: Gentlemen, now coming to the so-called second or more embracing order, upon the representation

proffered to me by affidavit that without any qualification at all the Federal order of October 27th, 1955, has been vacated, it is my construction that the last roadblock to a complete settlement has been removed and I announce my intention of signing this order, but before I do so if anyone would like to address themselves to the Court I would be delighted to hear them.

Mr. Adams: May it please the Court, the order that we call the second order to be presented to you is the one which we have agreed to amend in various respects and therefore it would have to be retyped and submitted to your Honor possibly late this afternoon or tomorrow morning and in due course we will, if your Honor will permit, we will now stipulate upon the record before your Honor [fol. 2885] those respects in which the order previously noticed for settlement will be changed.

I should like also to make this statement in so far as Sid W. Richardson is concerned. Mr. Richardson died on October 1st, 1959. I represent his executors whose names appear in the papers and I am authorized to act for them only and solely in respect of this settlement. I don't recall in this whole welter of litigation what case or cases if any Mr. Richardson was ever served in in this court, maybe he was never served in any, in the same way that Mr. Kirby was never served in any, and I therefore want to reserve any possible rights other than for the purpose of this settlement, which Mr. Richardson's executors might have. I might say that they have not been substituted nor has any application ever been made to this Court to substitute for them in this case. With that general reservation I am empowered to act for them, as I say, only in relation to this [fol. 2886] settlement.

Mr. Bijur: Very briefly, I think one thing should be made clear. A few moments ago your Honor remarked that Judge Dimock had lifted the so-called stay with respect to Mr. Kirby. As your Honor can see from the order Judge Dimock signed on the 24th he lifted the so-called stay or injunction against the use of the state court proceedings as a defense in the cases in this court as to all parties.

The Court: Yes.

Mr. Bijur: So it completely leaves your Honor free to dispose of the case.

The Court: Thank you.

Mr. Teitelbaum: If your Honor please, perhaps I can clarify the record on this point. There were in the Federal Court two orders. The first of these orders was made lifting the injunction so called as respects the defendant Kirby alone. A copy of that order was annexed to the settlement [fol. 2887] papers in respect to the Kirby order submitted here today. There was also a second order made by the Federal Court to which Mr. Bijur just referred and that was an order lifting the so called injunction against all the other defendants, and that second order of Judge Dimock is attached to the notice of settlement papers on what we are calling here the second order.

The Court: Very good. All right, gentlemen.

Mr. Brussel: Your Honor, the principal reason for the delay in the conferences this morning was a discussion among counsel concerning the provisions of paragraph twelve of the proposed order and in that connection we have reached an agreement as to language which I consider of such importance that with the leave of the Court I would like to spread this paragraph on the record at this time.

There is to be added to paragraph twelve, which will [fol. 2888] be revised in other respects, it is not necessary to be stated here, this decretal paragraph:

"And it is further ordered that to the extent permitted by law, Murchison Brothers and Alleghany Corporation use their best efforts to cause to be solicited and obtained for the 1960 annual meetings of IDS and the underlying fund companies such proxies for the voting of stock of IDS and of the underlying fund companies as are necessary to effectuate this order and the terms of the Basic Settlement, it being the intent and the understanding of Murchison Brothers, Alleghany Corporation and other parties hereto that, to the extent permitted by law, Murchison Brothers

will use their best efforts to enable Alleghany to have nominees of its designation elected to the IDS Board and to the extent permitted by law, to the boards of the underlying fund companies at their respective 1960 annual meetings."

[fol 2889] Mr. Adams: In addition to the statements made by Mr. Brussel it is understood that with respect to paragraph 12, the period of sixty days referred to therein will be changed to a period of one hundred days, and it is further my understanding that the phrase "and to effectuate the restoration of control of IDS to Alleghany Corporation upon such exchange" is to be stricken out.

I have one or two other suggestions with respect to the order. On page 6, Paragraph 7, five lines from the bottom the word "defendants" is to be stricken out and there is to be substituted the word "brothers" and such is to be done also on the following page, seven lines from the top, and wherever else may be necessary to effectuate the intent of that paragraph.

Also at some appropriate place, and I haven't had time to find out where it ought to go, but at some appropriate place or places, both on behalf of the Murchisons and the Richardson executors, and I take it on behalf of the Young [fol 2890] Estate, we will insert language which will be in substance the same as in the Kirby order, and we will say, "Severing and continuing this action as to all defendants other than," the defendant or defendants there concerned.

Finally it is agreed that the same language which has now been incorporated in the so called Kirby order as Paragraph 7 be incorporated in this order, that language being, as I understand it, as follows:

"Ordered, that any party may apply to the Court on three days notice for the purpose of effectuating the aforesaid provisions."

As far as we are concerned, I know that appropriate notice has been given for the settlement of this order and

I take it that all the other parties interested have been notified.

The Court: Yes. The Court has taken steps to rectify any possible hyper technicality that might have existed with reference to notice even as to the second order. My [fol. 2891] secretary has made an effort to telephone every attorney whose appearance we have noted and who may not be here today and we have ordered them here to appear forthwith. This was done about an hour ago and most of the attorneys either indicated they had no objection or that they have no intention of appearing, so I believe that is adequately taken care of.

Mr. Daly: If your Honor please, there have been a number of individuals and two corporations who were named as defendants in various actions, including this action and actions in the Federal Court. None of them has appeared in this action. Some of them have appeared in the Federal Court action.

The proposed judgment which is before your Honor does not provide for a relief for them on the payment of moneys provided for in the order by various defendants. I am now advised that no one has any objection to including in the various places in paragraphs 4, 5, 6 and 7 the names of the [fol. 2892] individuals and corporations which I will now read into the record, it being understood that when Mrs. Young, or the Young Estate, rather pays in the money provided for in the proposed order, that releases will be granted to these individuals and corporations as well as to the Young Estate and Mr. Deegan who are already provided for in the order.

I will with your Honor's permission read these names in the record at the present time and I think the easiest way to do it would be to hand this list to the stenographer and let him copy it.

The Court: Very well.

Mr. Daly: Would your Honor like to hear this?

The Court: The Court hears no objection to this.

Mr. Graubard: There is no objection to this, your Honor.

[fol. 2893]

J. J. Anzalone
Frank B. Bateman
O. Henry Briggs
Walter W. Foskett
Henry J. Guild
Herman R. Neff
Brooks Potter
R. W. Purcell
Radcliffe Swinnerton
Andros Van Pelt
Chesapeake Industries, Inc.
New York Central Railroad Company

Mr. Teitelbaum: If your Honor please, I would like to have the record show what I believe it shows inferentially but might as well show it directly. I have appeared here today as counsel to Allegheny Corporation. Mr. Kirby, as previously stated, has not appeared in these proceedings, but I want to state on his behalf as his attorney in fact that he does hereby consent in open court to the jurisdic [fol. 2894] tion of this Court for the purpose of enforcing the supplemental stipulation of settlement under the provisions of the order that your Honor is settling here today. This, of course, is not in any way a general appearance or a special appearance but solely for the purpose stated.

The Court: So understood, all right.

Mr. Brussel: Your Honor, just one further correction in Paragraph 7 of this order, there was inadvertently omitted a reference to the delivery of the instruments modifying the Murchison guarantees which are referred to in Exhibit A and in Paragraph 2(e) of the stipulation of settlement concluded in July of 1955.

After the words "March 12, 1959" in line 3 of Paragraph 7 there should be added these words: "and the delivery to it of the agreement referred to as Exhibit A and more particularly described in Paragraph 2(e) of the stipulation [fol. 2895] of settlement dated July 23, 1955."

That is one of the essential documents to pass on the closing. It is now held in escrow by Lord, Day & Lord and should have been specifically referred to.

The Court: Is there any objection to that interpolation? All right, the Court hears none.

Mr. Kazon: If your Honor please, to effectuate the granting of the informal applications for intervention, this order in Paragraph 16 should be changed to add the names of Clarence Bailey and Adelaide Neuwirth.

Mr. Bijur: After Samuel R. Rosen.

The Court: Very well.

Mr. Kazon: And similarly in Paragraph 17 the provision with respect to Mr. Fitzsimmons' compensation should be changed to provide that he may apply for an allowance for his services as Referee after the entry of this order.

The Court: Very well. All right, gentlemen. I understand a final order embodying these minor corrections will [fol. 2896] be submitted to me for signature sometime during the course of the day or tomorrow.

Mr. Adams: It is a lengthy job and certainly if we don't get it done today, your Honor, we will get it done the first thing in the morning, but I take it this is now a matter of general agreement and certainly it is my understanding that it is the intention and efforts of the parties to dispose of this entire litigation in all respects.

Mr. Teitelbaum: That is certainly the intention, speaking for the people whom we represent.

The Court: Very good.

Mr. Daly: Your Honor, may I at this time express my personal thanks and appreciation of, I think, everybody here for your efforts in connection with this matter and the help you have extended to us?

The Court: And may I on behalf of the Court, add my own compliments to those already extended to you gentle- [fol. 2897] men by Judge Dimock, because I realize it was only due to the arduous efforts of you attorneys, many of whom I know worked during the Christmas holidays, that this settlement was brought about.

Personally I believe it is in the best interests of Allegheny and the stockholders and in any event, in the eyes of the Court, it has been a very happy result.

If I may display my Latin for the benefit of Carl Newton, I would say "interest rei publicae ut sit finis litium." If there are any Harvard men in the house I will translate it for them; vaguely it means that you are all entitled to the thanks of the Republic. I hope your clients will appreciate your efforts when the day of reckoning comes.

There being no further business before this Court, this hearing stands adjourned sine die.

[fol. 2898]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-358

56th ANNUAL REPORT · 1949

INVESTORS DIVERSIFIED SERVICES, INC.

2116
[fol. 2899]

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894 as Investors Syndicate

Board of Directors

J. T. Anzalone	H. J. Gumb
Grady Clark	R. W. Pomeroy
F. E. Crabb	Galen Van Meter

Principal Officers

F. E. Crabb	*Chairman of the Board and President*
Galen Van Meter	*Vice Chairman of the Board*
H. K. Bradford	*Vice President*
H. C. Carr	*Vice President*
Grady Clark	*Vice President*
F. Franklin Hatch	*Vice President*
C. D. McGuigan	*Vice President*
C. J. Moore	*Vice President and Secretary*
J. R. Ridgway, Sr.	*Vice President*
D. F. Ryan	*Vice President*
N. B. Wade	*Vice President and Controller*
J. B. Racey	*Treasurer*
T. L. Kenealy	*Auditor*

Executive offices: Roanoke Building, Minneapolis, Minnesota

Independent Public Accountants: George Rossetter & Co., 1320 Rand Tower, Minneapolis, Minnesota

JUNE 5, 1950

To Certificate Holders and Stockholders of Investors Diversified Services, Inc:

THE OPERATIONS of our company for the year ended December 31, 1949 are covered in this — our 50th Annual Report. It was an eventful year. Business was good, our organization continued to expand — and during the year, control of the company moved into new and strong hands.

A brief review of our operations may be of interest to many new readers. The principal function of I. D. S., in addition to the management of its own assets, is to act as investment manager and distributor for its wholly owned subsidiaries and affiliated open-end investment companies. These are:

Subsidiaries:

INVESTORS SYNDICATE OF AMERICA, INC.
INVESTORS SYNDICATE OF CANADA, LTD.[1]
INVESTORS SYNDICATE TITLE & GUARANTY COMPANY.

Affiliates:

INVESTORS MUTUAL, INC.
INVESTORS MUTUAL OF CANADA, LTD.[2]
INVESTORS SELECTIVE FUND, INC.
INVESTORS STOCK FUND, INC.

(1) Investment certificates distributed by their own organizations.

(2) I. S. of Canada acts as investment manager and distributor.

During 1949, our company made substantial improvements in the effectiveness and efficiency of the services and facilities it offers to these subsidiary and affiliated companies. A brief description of our services will illustrate what we do and what has been accomplished.

DEVELOPMENT AND DISTRIBUTION OF INVESTMENT-TYPE CERTIFICATES. These certificates are designed primarily for investment accumulation, either on the basis of a periodic payment plan over a term of years, or on the basis of a fully prepaid plan. They are issued in forty-two states by Investors Syndicate of America, in nine provinces of Canada by Investors Syndicate of Canada and in New York State by Investors Syndicate Title & Guaranty Company. The distribution and servicing of the certificates are handled by 161 divisional offices and 1850 licensed representatives.

DISTRIBUTION OF MUTUAL-TYPE INVESTMENT COMPANY SHARES. These affiliated companies named above are more commonly known as "open-end" investment trusts. Persons who invest in their shares obtain an interest in a widely diversified portfolio of corporate securities. This type of investment medium is experiencing increasing nationwide popularity and our affiliated companies have shared in the resulting growth of the industry. The distribution of these shares is also made through the divisional offices of I. D. S. and its wholly-owned subsidiaries.

OPERATIONS IN THE REAL ESTATE-MORTGAGE FIELD. From the time of its original incorporation I. D. S. has traditionally directed a large share of its investments into this field. The following table indicates the scope of our mortgage financing operations in three important post-war years.

SUMMARY OF MORTGAGES MADE DURING THREE-YEAR PERIOD

	1947		1948		1949		Totals for 3 years	
CONSTRUCTION LOANS	Units	Amount of Financing	Units	Amount of Financing	Units	Amount of Financing	Units	Amount of Financing
Single Dwellings	12,553	$ 92,157,463	8,639	$63,990,530	17,017	$104,866,633	38,211	$261,046,626
Two to Six-family Dwellings	605	3,458,436	358	1,497,038	314	2,628,019	1,277	7,583,493
Apartments	5,159	32,250,216	2,568	16,054,590	6,104	42,611,475	13,831	90,916,281
Total of Construction Mortgages Made	18,319	$127,866,115	11,565	$81,542,158	23,435	$150,138,127	53,319	$359,546,400
Mortgage Loans (other than for new construction)		32,890,954		12,316,239		17,330,556		62,537,749
Total Mortgages Made		$160,757,069		$93,858,397		$167,468,683		$422,084,149

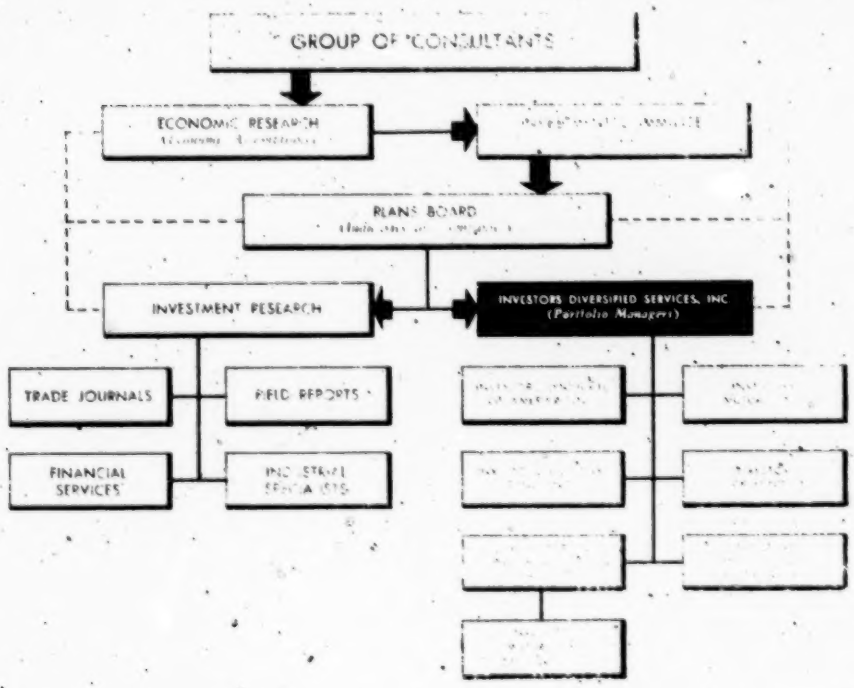
In 1949 I. D. S. provided construction funds for approximately 2.3 housing units out of every 100 built during the year, principally in the field of medium-priced homes. These operations are being conducted through 18 mortgage loan offices.

MANAGEMENT SUPERVISION OF SECURITIES PORTFOLIOS. In this field I. D. S. has under its general supervision its own portfolio of investment securities, and also, under appropriate inter-company agreements, those of its subsidiaries and affiliates.

During 1949 I. D. S. substantially expanded its research and investment management facilities to obtain the highly efficient and competent research organization that is so essential in the supervision of investment securities.

Our concept of investment management includes, moreover, the belief that appraisals of all economic factors affecting business conditions are fundamental to the formulation of a sound investment policy. We try, therefore, to procure the best authorities available to analyze economic trends and to measure the impact of these trends upon industry and business. Such analysis is developed through quarter-annual meetings of a panel of outstanding consultants composed of experts in finance, labor, foreign affairs, politics, agriculture, manufacturing, markets, prices and other factors that may affect our national economy.

The following chart illustrates I. D. S. organization procedure used in translating economic conclusions into actual investment policy programs.



During the past two years I. D. S. has also expanded its services into the type of corporate financing commonly known as "private placements." Such investments represent direct loans to corporations or the direct purchase of their securities. Although this service presently represents only 3.15 per cent of our total assets, it has attractive and interesting possibilities.

The scope of I. D. S. operations are revealed in the following chart which shows the sources and disposition of its funds for the year ended December 31, 1949.

[fol. 2902]

Sources and Disposition of Funds

YEAR ENDED DECEMBER 31, 1949

Thousands of Dollars		*Thousands of Dollars*	
SOURCES		**DISPOSITION**	
$44,999	— Mortgage Payments Received (INCLUDES INTEREST)		
17,805	— Certificate Payments Received		
2,077	— Interest & Dividends on Securities		
9,717	— Underwriting & Management Fees		
		Disbursements on New Mortgage Loans	$144,561
98,329	— Mortgages Sold		
		Securities Purchased	24,548
		Paid Certificate Holders on Maturing Certificates	15,880
23,305	— Securities Sold	Paid Certificate Holders for Certificates Surrendered	7,111
5,582	— Miscellaneous (Net)	Certificate Loans (Net)	3,122
4,070	— Reduction in Cash Balance	Expenses and Commissions	10,785
$205,807			$205,807

MAJOR DEVELOPMENTS IN 1949. Our company was originally incorporated as Investors Syndicate in July, 1894, and it continues to operate under its original charter. In 1949, the name was changed to Investors Diversified Services, Inc., principally to avoid confusion between its original name and the names of its wholly-owned subsidiaries.

With the enactment of the Federal Investment Company Act of 1940, I. D. S. discontinued the offering of its own certificates and devoted its facilities to management of its own assets, and investment management and distribution of securities for its subsidiaries and affiliates. During the following nine years the company increased in size because continuing payments and increments on certificates in force exceeded the outgoing payments for terminating certificates. It has just recently reached the point where this condition has been reversed.

At the beginning of 1950 approximately $200,000,000 maturity value of installment certificates had four or less certificate years remaining to their maturity. Of these, approximately $26,000,000 should mature during the current year. Therefore, there will now be a gradual reduction of our obligations and assets as these certificates mature.

Another important change in the affairs of I. D. S. came about in April, 1949 when Alleghany Corporation acquired a controlling interest in our company through the purchase of over 90% of the voting common stock. We believe that this control by Alleghany, which makes available to us able executives with long and successful experience in the financial field, will prove of real value to our organization.

Our management looks to the company's future with a high degree of confidence. I. D. S., from its inception in 1894, has been particularly interested in the financing of homes. The need for new construction is continuing and should be substantial for the next few years.

Through its mutual-type investment company affiliates, I. D. S. has also contributed immeasurably to the distribution of ownership of American enterprises among the average citizens of America, by giving them diversification of investments and experienced supervision.

In conclusion, we desire to express our appreciation to our certificate holders and stockholders, now numbering in the neighborhood of 170,000 people, for their continued good-will and to our entire personnel, numbering over 3,000 people, for their loyalty and efficient services.

E. E. Crabb

PRESIDENT AND
CHAIRMAN OF THE BOARD

2120
[fol. 2903]

INVESTORS DIVERSIFIED SERVICES, INC.

Balance Sheet.

ASSETS (Notes 2 and 3)

			December 31	
			1949	1948
Cash (Note 4):				
On hand and in banks			$ 3,480,009.78	$ 3,712,757.10
Deposited with central depositary, states, and provinces			1,381,169.68	5,226,851.66
Total cash			$ 4,861,179.46	$ 8,939,608.76
Securities (Note 5):	*Market Value*			
Bonds at amortized cost:	1949	1948		
United States Government	$ 7,179,213.53	$ 3,956,913.65	$ 6,949,862.65	$ 3,910,820.52
Other	24,307,177.89	24,967,740.24	24,717,103.18	25,608,741.58
Preferred stocks at average cost—issues in arrears at market	19,100,906.21	20,638,010.76	21,726,351.61	24,416,940.47
Common stocks at average cost	353,052.38	325,305.03	298,218.43	298,218.43
Total securities	$51,140,350.01	$49,887,975.68	$ 53,691,795.87	$ 54,234,721.00
Mortgages on Real Estate—Principal balances, less reserves:				
First mortgages:				
Insured by Federal Housing Administration			$ 72,799,364.47	$ 98,077,360.03
Partially guaranteed by Veterans Administration			31,277,945.54	24,899,256.22
Other first mortgages and first liens on real estate			96,777,875.05	74,512,961.97
Second mortgages fully guaranteed by Veterans Administration			7,957,527.28	5,146,427.89
Total mortgages on real estate			$208,812,212.34	$200,636,006.11
Loans on Certificates—Secured by reserves			$ 11,437,647.32	$ 9,508,277.95
Real Estate—Held for investment or sale—at depreciated cost or less			$ 339,325.71	$ 416,801.73
Accrued Interest and Dividends Receivable on Investments			$ 1,511,378.74	$ 1,352,191.91
Investments in and Receivables from Subsidiary Companies:				
Investments in capital stock—at book value of underlying net assets less minority interests (Note 8)			$ 5,284,959.39	$ 4,434,051.65
Receivables			1,825,098.04	2,591,153.43
Total investments in and receivables from subsidiary companies			$ 7,110,057.43	$ 7,025,205.08
Other Assets:				
Due from brokers for securities sold			$ 288,673.50	$ 232,317.12
Receivables from affiliated companies			53,289.59	298,107.68
Deposits with Federal National Mortgage Association			262,826.11	108,990.00
Receivables from sundry debtors, less reserves			329,484.75	197,715.55
Cash surrender value of life insurance on officers for benefit of company			51,594.19	49,700.03
Office furniture and fixtures—at depreciated cost			511,267.60	437,474.99
Inventories of supplies and other deferred charges			197,860.07	194,034.15
Total other assets			$ 1,694,995.81	$ 1,518,339.52
Total			$289,458,592.68	$283,631,152.06

LIABILITIES (Note 2)

	December 31	
	1949	1948
CERTIFICATE RESERVES (Notes 1 and 6):		
Installment certificates:		
Cash surrender values attained at dates of last completed certificate years	$234,753,638.13	$228,017,307.55
Reserve payments applicable to current certificate years	16,767,621.12	18,050,896.34
Payments made in advance of current certificate years' requirements and accrued interest thereon	13,220,368.38	15,049,696.36
Reserves to stabilize financing costs	5,086,617.26	5,305,500.00
Special reserve	3,500,000.00	2,374,355.10
Other	1,717,566.55	1,404,589.43
Fully paid certificates	8,913,684.19	9,451,193.53
Total certificate reserves	$283,959,495.63	$279,653,538.31
OTHER LIABILITIES:		
Accounts payable:		
Due to brokers for securities purchased		$ 113,860.60
Commissions due to sales representatives	$ 231,634.66	194,914.81
Subsidiary companies	73,058.85	56,997.21
Sundry creditors	481,420.60	317,686.13
Note payable to affiliated company—subordinated (Note 12)	137,259.95	
Unearned interest on loans	176,908.03	141,414.75
Undistributed collections from mortgagors and certificate holders	61,205.53	170,635.97
Accrued taxes:		
Income	476,000.00	
Other	94,469.46	87,450.72
Accrued sales representatives' incentive pay bonus	279,047.46	212,327.97
Other accrued expenses	26,027.60	25,459.33
Total other liabilities	$ 2,037,032.14	$ 1,320,747.49
DEFERRED CREDIT—Mortgage construction loan fees	$ 565,358.26	
CAPITAL STOCK, SURPLUS, AND RESERVE FOR CONTINGENCIES:		
Capital stock:		
Common, Class "A" (not preferred and non-voting)—$5 par—authorized, 260,000 shares; outstanding, 175,836.37 shares	$ 879,181.85	$ 879,181.85
Common—$5 par—authorized, 140,000 shares; outstanding, 114,908.16 shares	574,540.80	574,540.80
Total capital stock	$ 1,453,722.65	$ 1,453,722.65
Reserve for contingencies:		
Balance at beginning of year	$ 1,203,143.61	Nil
Appropriated from surplus	239,840.39	$ 1,203,143.61
Balance at end of year	$ 1,442,984.00	$ 1,203,143.61
Earned surplus, per accompanying statement (Notes 1, 7 and 8)	Nil	Nil
Total capital stock, surplus, and reserve for contingencies (Notes 9 and 10)	$ 2,896,706.65	$ 2,656,866.26
TOTAL	$289,458,592.68	$283,631,152.06

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus

FOR THE YEARS ENDED DECEMBER 31, 1949 AND 1948

	Year Ended December 31	
	1949	1948
Gross Income		
Gross income from investments, mortgage operations, certificate servicing, and management services		
Investment income		
Interest on bonds, mortgages, and other loans	$ 10,975,637.05	$ 10,180,570.77
Cash dividends on stocks		
From subsidiary company	165,000.00	
From others	982,340.13	1,059,295.69
Mortgage operations		
Premiums on mortgages sold		
To subsidiary companies (Note 11)	447,537.01	567,829.40
To others	185,000.25	60,521.28
Service fees		
On mortgages owned	41,761.57	54,240.59
On mortgages serviced for subsidiary companies	488,828.70	405,013.98
On mortgages serviced for others	239,154.77	113,214.90
Construction loan fee income	2,424,812.88	327,150.75
Other mortgage income	337,537.31	400,287.95
Installment certificate servicing income and interest equalization credits	571,992.46	661,309.25
Investment management and collection fees from subsidiary and affiliated companies (Note 12)	1,030,281.10	931,181.38
Other income	183,053.58	91,090.14
Total	$ 18,072,998.01	$ 14,827,772.14
Gross underwriting fees from subsidiary and affiliated companies (Note 12)	7,629,449.90	7,036,801.87
Total gross income	$ 25,702,447.91	$ 21,864,574.01
Costs and Expenses		
Applicable to certificates, investments, mortgage operations, and management services:		
Provision for certificate reserves		
Installment certificates (Note 1)	$ 12,760,991.60	$ 12,159,151.06
Fully paid certificates	367,128.42	380,996.72
Total	$ 13,128,120.02	$ 12,540,147.78
Less net recoveries from lapses and surrenders	188,419.17	144,282.38
Remainder	$ 12,939,700.85	$ 12,395,865.40
Mortgage branch office and agency expenses—per accompanying statement	2,208,673.89	1,791,002.58
Real estate operating loss	44,722.09	3,944.87
Portion of sales agency fees and expenses regarded as being applicable to installment certificate collection expense	263,114.29	245,252.42
General and administrative expenses—portion—per accompanying statement	2,376,432.11	2,037,313.16
Total costs and expenses applicable to certificates, investments, mortgage operations, and management services	$ 17,832,643.23	$ 16,473,378.43
Underwriting expenses:		
Commissions and incentive pay bonuses to sales representatives	$ 5,083,010.52	$ 4,609,655.25
Collection fees and other allowances to sales agencies—portion regarded as applicable to selling and promotional expenses	233,706.71	297,367.11
Advertising and promotional expense	203,113.64	228,403.00
Other direct costs and expenses	202,966.64	182,930.88

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income and Earned Surplus

FOR THE YEARS ENDED DECEMBER 31, 1949 AND 1948 (Cont.)

	Year Ended December 31 1949	1948
COSTS AND EXPENSES (Cont.):		
Underwriting expenses (Cont.):		
General and administrative expenses portion per accompanying statement	$ 992,309.80	$ 559,502.54
Total underwriting expenses	$ 6,354,405.51	$ 5,780,858.75
Total costs and expenses	$24,187,046.54	$22,260,237.21
INCOME (LOSS):		
From investments, mortgage operations, certificate servicing, and management services, less costs and expenses applicable thereto	$ 240,354.78	$(1,845,006.29)
From underwriting fees less expenses applicable thereto	1,275,046.59	1,249,943.09
Total income (loss)	$ 1,515,401.37	$ (595,063.20)
INCOME CREDITS (CHARGES) - net:		
Provision for loss on foreign exchange (Note 2)	$ (113,024.13)	
Other	(104.76)	$ 10,109.79
Total income credits (charges) - net	$ (115,128.89)	$ 10,109.79
INCOME (LOSS) BEFORE PROFIT OR LOSS ON INVESTMENT TRANSACTIONS AND PROVISION FOR INCOME TAXES	$ 1,402,272.48	$ (585,553.41)
PROFIT (LOSS) ON INVESTMENT TRANSACTIONS:		
Realized profit (loss):		
Securities (bonds, first-in, first-out basis, stocks, average cost basis)	$ (423,505.76)	$ (515,325.28)
Real estate (depreciated cost basis)	5,176.54	(5,136.74)
Net realized profit (loss) on investment transactions	$ (418,329.22)	$ (520,462.02)
Provision for possible future losses ("credit for reserves applied to reduce losses):		
Securities (Note 5)	$ 258,427.24	$ 515,325.28*
Real estate	1,590.87*	6,093.38*
Net provision ("credit)	$ 257,336.37	$ 521,418.66*
Profit (loss) on investment transactions - net	$ (675,665.59)	$ 956.64
INCOME (LOSS) BEFORE PROVISION FOR INCOME TAXES	$ 726,606.89	$ (584,596.77)
PROVISION FOR INCOME TAXES:		
Federal (Note 13)	$ 488,000.00	
State	8,000.00	
Total	$ 476,000.00	
Less amount applicable to deferred mortgage construction fees (Note 13)	152,000.00	
Remainder	$ 324,000.00	
NET INCOME (LOSS) FOR THE YEAR (Note 1)	$ 402,606.89	$ (384,596.77)
PROPORTIONATE SHARE OF EARNINGS OF SUBSIDIARY COMPANIES FOR THE YEAR	1,127,878.40	758,951.87
LESS DIVIDENDS RECEIVED FROM SUBSIDIARY COMPANY—included in income	(165,000.00)	
EARNED SURPLUS AT BEGINNING OF THE YEAR	Nil	1,203,143.61
GROSS SURPLUS	$ 1,365,485.29	$ 1,577,498.71
DEDUCTIONS:		
Appropriation for additional installment certificate reserves	$ 1,125,644.90	$ 374,355.10
Appropriation to reserve for contingencies	239,840.39	1,203,143.61
Total deductions	$ 1,365,485.29	$ 1,577,498.71
EARNED SURPLUS AT END OF YEAR (Notes 1, 7, and 8)	Nil	Nil

INVESTORS DIVERSIFIED SERVICES, INC.

General and Administrative Expenses

YEARS ENDED DECEMBER 31, 1949 AND 1948

	Year Ended December 31	
	1949	1948
Salaries	$ 2,212,188.17	$ 1,963,174.61
Attorneys' fees and expenses	156,569.02	112,840.77
Traveling expenses	143,935.24	137,995.34
Taxes and registration fees (other than income taxes)	171,317.74	141,886.60
Rents	124,889.34	91,905.38
Telephone, telegraph, postage, and express	118,997.52	89,118.24
Depositary fees	65,759.70	59,004.28
Accounting, tax service, state examination fees and expenses and actuarial survey	60,874.24	63,110.99
Printing and stationery	85,908.37	80,892.05
Provision for depreciation of office furniture and fixtures	54,802.95	51,185.86
Directors' fees	6,749.87	4,999.92
General office expenses	127,198.89	95,394.35
Other expenses	169,047.19	161,561.86
Total	$ 3,498,238.24	$ 3,053,070.25
Less amounts charged to subsidiary companies	489,502.33	457,254.55
Remainder	$ 3,008,735.91	$ 2,595,815.70

NOTE – General and administrative expenses, after deduction of charges to subsidiary companies for use of facilities and personnel, were distributed as follows: To costs and expenses of servicing contracts and certificates, investments, mortgage operations, and management agreements – 1949, $2,376,432.11; 1948, $2,037,313.16; to underwriting expenses – 1949, $632,303.80; 1948, $558,502.54. The distribution of the general and administrative expenses is designed to follow the activities of the Company as set forth in those sections.

Mortgage Branch Office and Agency Expenses

YEARS ENDED DECEMBER 31, 1949 AND 1948

Commissions and premiums on new loans:		
To subsidiary companies	$ 136,639.09	$ 115,298.38
To others	64,894.52	474,675.35
Salaries	642,880.40	541,649.37
Service fees:		
To subsidiary companies	168,023.69	139,415.32
To others	268,029.16	261,770.82
Federal National Mortgage Association commitment fees	461,937.30	1,489.50
Cancellation fees paid to servicing agents	142,358.02	
Rent	59,124.53	54,702.13
Telephone, telegraph, postage and express	70,244.07	56,274.66
Traveling and automobile expenses	60,522.90	42,414.79
Other expenses	160,967.74	103,312.26
Total	$ 2,235,621.42	$ 1,791,002.58
Less portion charged to subsidiary company	26,947.53	
Remainder	$ 2,208,673.89	$ 1,791,002.58

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INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements

DECEMBER 31, 1949

1. INSTALLMENT CERTIFICATE RESERVES:

(A) The Company is not subject to the reserve standards of the Investment Company Act of 1940, nor is it subject to any rules of the Securities and Exchange Commission governing the form and content of the financial statements or the accounting policies.

The Company does not follow the generally accepted accounting principle of accruing certificate reserves as such certificates progress during the certificate year, by charges against income, but instead the Company has followed the practice of deferring the accrual of such certificate reserves until dates of completion of certificate years, which dates, for the much greater part, do not coincide with the end of the Company's fiscal year.

Based on the Company's own reserve program, the rates at which the installment certificate reserves are improved at the end of certificate years differ with each series of certificates outstanding, and generally from year to year within each series. Had such reserves been accrued in accordance with generally accepted accounting principles, the total certificate reserves would have been increased and capital and surplus decreased at December 31, 1949, by $2,941,897.78. This would have produced an accounting deficit in capital and surplus at December 31, 1949, of $45,191.13, (on basis of carrying investments at cost). On such basis, the increased costs of accumulating certificate reserves would have reduced net income for 1949 by $30,000 (after reduction of $60,000 in provision for exchange discount on the portion of the accrual applicable to Canadian certificates—See Note 2), and would have reduced net income for 1948 by $300,000.

(B) The Company engaged an independent firm of actuaries, Joseph Froggatt & Co., Inc., of New York City, to make an analysis of the Company's installment certificates outstanding as to duration, and experience as to lapses, stretch-outs and surrender thereon. They also made a study of the Company's earnings during the years 1940 through 1943, inclusive, which showed that the average net earnings (exclusive of losses from distribution of securities for affiliated companies, net earnings of wholly-owned subsidiaries, and profits and losses from sale of portfolio securities) was 4.535% on the Company's total assets. A comparison between the reserves computed by the actuaries on this 4.535% basis, the reserves actually maintained by the Company, and the reserves that would have been provided on the basis of a theoretical rate of improvement of 3½% (after allowances for unrealized benefits from delinquent payments and surrenders) is as follows:

(000 Omitted)

December 31:	*Face Amount of Installment Certificates Outstanding*	*Reserves Per Actuaries' Computation**	*Applicable Installment Reserves Maintained by Company*	*Reserves Computed on Theoretical 3½% Basis*
		(Before Exchange Discount on Canadian Amounts)		
1943	$648,149	$168,277	$160,477	$190,302
1944	593,584	183,529	176,358	203,973
1945	557,231	202,372	196,157	221,854
1946	530,202	222,883	217,163	241,050
1947	505,754	243,866	238,442	260,414
1948	476,114	258,676	254,054	273,204
1949	440,596	265,508	262,604	277,817

*Based on 4.535% rate.

The Company has developed sources of income other than its pure investment income from which it expects to receive additional net earnings. Such other sources of

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INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1949 (continued)

income include that realized from management and underwriting fees received from affiliated and subsidiary companies.

The obligations for cash surrender values are specifically provided for in the paid terms of the certificates and at December 31, 1949 were considerably less than the amount of certificate reserves maintained by the Company.

2. Canadian Assets and Liabilities

The book value of net assets employed in Canada at December 31, 1949, aggregated $1,410,000.00 ($22,171,430.80 in assets less $20,761,430.80 in liabilities), after conversion into United States dollars at the official buying rate of exchange of 100⅛%, of all Canadian items except assets payable in United States funds.

The book value of net assets employed in Canada at December 31, 1948, aggregated $1,000,150.00 ($24,343,183.18 in assets less $23,343,033.18 in liabilities), after conversion into United States dollars at the then official rate of exchange of par. Canadian assets are realizable in United States currency only by permit from the Canadian Exchange Control Board.

Unrealized loss on exchange conversion amounted to $113,094.13 at December 31, 1949. Canadian operations are reflected in the income statement on a dollar for dollar basis. The provision for exchange loss of $113,094.13 was charged against 1949 income.

3. Deposits of Assets

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 391, Laws of Minnesota, 1943, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of December 31, 1949, the following assets were so deposited:

	Total	Central Depository	Other States and Provinces
Cash	$ 1,381,180.69	$ 1,093,293.30	$ 287,874.39
Securities	53,319,013.38	23,573,028.52	29,745,984.86
Mortgages on real estate	203,178,030.51	79,749,233.97	123,428,796.54
Receivable from brokers for securities sold but not delivered	266,950.94		266,950.94
Total	$258,145,174.53	$104,417,557.85	$153,727,616.68

The foregoing amounts represent the book values of securities, exclusive of accrued interest and dividends receivable, and principal amounts of mortgages and other liens on real estate. The total deposit requirements at December 31, 1949 aggregated $234,171,648.26.

4. Cash

At December 31, 1949, the Company held funds collected from mortgagors for future payments of taxes and insurance, and agency collections for others in the aggregate amount of $5,388,254.45. Drafts issued by the Company which had not been presented for payment at that date aggregated $1,110,389.69. These amounts, aggregating $4,709,644.14, have been deducted from the cash balances and from the contra liability accounts.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statement—December 31, 1949—Continued

5. Securities

The market values of listed and active securities at December 31, 1949 are based upon closing published market quotations at that date. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices except that in the absence of available quotations twenty-one issues were priced at their book value of $9,804,419.71, which in the opinion of the Board of Directors was equivalent to fair market value. A list of securities is included as part of this report.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1949 were fully income producing and not in default except for two issues of preferred stock on which dividends were in arrears and which are carried at market values, or $205,144.50 less than cost.

The carrying values of securities at December 31, 1949 and 1948 exceeded the market values thereof in amounts of $2,551,445.80 and $4,346,745.37, respectively. There was an excess of carrying value over market value of securities at December 31, 1947 of $9,741,078.89. The decrease in unrealized depreciation of securities for 1949 was $1,795,299.57. In 1948 the increase in unrealized depreciation was $[illegible],388.44.

6. Asset Ratio Maintenance Requirements

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "E" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to such asset ratio maintenance provisions.

In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or in assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At December 31, 1949, the Company was required to maintain qualified assets in the amount of $257,006,819.32 (exclusive of certificate loans), and the Company had qualified assets at that date in excess of such amount.

7. Dividend Restrictions

According to the terms of the Series "C" certificates, no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31 of the second preceding year, the Board of Directors shall have determined upon a credit to each Series "C" certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series "C" certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Further, under sub-section (b) of Section 28 of the Federal Investment Company Act of 1940, the Company may be restricted from paying dividends to its stockholders.

8. Investments in Subsidiaries

Investments in subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets. The book value of securities held by subsidiaries at December 31, 1949, was $1,228,472.02 in excess of market values at that date.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1949 Continued

Credits to earned surplus for undistributed earnings of subsidiary companies aggregated $3,663,812.93 at December 31, 1949. The earned surplus of one of the Company's subsidiaries is restricted as to dividend payments during 1950 by reason of declaration of additional credits for that year at a rate lower than the minimum which could be declared without such restriction. Credits to earned surplus for undistributed earnings of that subsidiary aggregated $2,348,407.22 at December 31, 1949.

9. CONTINGENT MORTGAGE REPURCHASE AGREEMENT

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 96.8% owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on December 31, 1949, were subject to such repurchase agreements aggregated $20,068,539.52, including $12,327,517.51 of FHA insured mortgages. Seven of these mortgages with balances of $19,191.73 were over six months delinquent but were well secured.

10. CONTINGENT LIABILITY UNDER SECURITIES ACT OF 1933

The Company acts as principal underwriter for Investors Mutual, Inc. and Investors Stock Fund, Inc., open-end diversified management investment companies, and Investors Syndicate of America, Inc., a face-amount certificate company. In making sales of shares of stock and face amount certificates of those companies during the period from April 28 to May 23, 1949, inclusive, a prospectus was used which did not contain information as to the acquisition, on April 27, 1949, of the controlling shares of stock of Investors Diversified Services, Inc., by Alleghany Corporation from Mr. Bertin C. Gamble. With respect to such sales the Company may or may not be liable under Section 12 of the Securities Act of 1933 but it does not admit any such liability.

11. PREMIUMS ON MORTGAGES SOLD TO A SUBSIDIARY COMPANY

The Company follows the practice of charging costs incurred in connection with the acquisition of mortgages to expense as incurred. Mortgages are sold to subsidiary companies at a premium, which is credited to income in the year of sale. During 1949 the Company may have realized a profit from such sales. One of the subsidiaries capitalizes such premiums and amortizes them over a ten-year period. The amount of premiums capitalized by the subsidiary at December 31, 1949 which were applicable to 1949 purchases, aggregated $383,211.20. It was impracticable to determine the amount of inter-company profit, if any, included therein.

12. TERMINATION OF MANAGEMENT AND UNDERWRITING CONTRACTS WITH AFFILIATED OPEN-END INVESTMENT COMPANIES; NEW AGREEMENTS ENTERED INTO; AND LOAN FROM ALLEGHANY CORPORATION

Due to the acquisition of the controlling shares of Investors Diversified Services, Inc., by Alleghany Corporation on April 27, 1949, the underwriting and management agreements between the Company and its affiliated open-end investment companies were automatically terminated in accordance with the provisions of the agreements as provided by law. New underwriting agreements were entered into between the Company and its affiliated open-end investment companies on May 16, 1949, and new investment management agreements were entered into on October 5, 1949. Under the terms thereof, the Company will receive fees on the same basis from the respective dates of the agreements as was provided for under the terminated contracts.

During the periods from the date of termination of the agreements to dates of the new agreements, the Company continued to furnish its affiliated open-end investment companies with underwriting and management service without written agreements. On October 5, 1949, the stockholders of the affiliated open-end investment companies authorized payments for such services, the Company subsequently accepted such payments, on basis which resulted in a decrease in management fees of $108,815.81 and of underwriting fees of $28,444.14 from the fees which would have been payable on the basis of the terminated and new agreements.

Pursuant to agreement, on October 7, 1949, Alleghany Corporation loaned the Company $137,259.95, representing the difference between the fees received from the affiliated open-end investment companies and fees which would have been received under the terminated contracts during the period from date of termination of the old agreements to dates of the new agreements. As security for the indebtedness, the Company gave Alleghany Corporation its non-interest bearing note which is subordinate to the Company's obligations to holders of face amount certificates. The note is payable when the Company has established reserves on its face amount certificates (without reducing the aggregate of its surplus and reserve for contingencies below $1,000,000, unless otherwise determined by the Board of Directors of the Company) in an amount at least equal to the minimum requirements of section 28(a) of the Investment Company Act of 1940.

13. Income Taxes

By reason of the provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries and the Company has elected to file on that basis. If unconsolidated federal income tax returns were filed, the federal income taxes for the years 1949 and 1948 would have been approximately $502,000.00, and Nil, respectively, as compared with the provisions of $468,000.00, and Nil, respectively, on a consolidated tax basis. The Bureau of Internal Revenue has not completed examination of federal income tax returns for years subsequent to 1945, and taxes for those years have not been finally determined.

Fees on mortgage construction loans are includable in income for income tax purposes when received. The provision for income taxes for the year 1949 includes $152,000.00 applicable to mortgage construction loan fees deferred on the books and in the accompanying statements, and such amount has been allocated to the deferred fee income.

14. Gross Rates of Return on Investments

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on securities, mortgages, and certificate loans for the years 1949 and 1948, based upon the monthly average book values of the investments, were as follows:

	1949	*1948*
Securities	3.68%	3.58%
Mortgages	4.56	4.38
Certificate loans	5.22	5.64
Combined average	4.39%	4.24%

INVESTORS DIVERSIFIED SERVICES, INC.

Investments in Securities

DECEMBER 31, 1949

SUMMARY OF INVESTMENTS IN SECURITIES

Description	*Market Value* *
BONDS:	
Domestic bonds:	
U. S. Government and U. S. Government institutions	$ 7,179,213.53
Municipal	86,184.50
Railroad	3,399,020.00
Public utility	1,990,437.50
Industrial	10,302,407.21
Total domestic bonds	$22,957,262.74
Canadian bonds:	
Dominion Government and Dominion Government guaranteed	$ 901,041.25
Provincial	2,256,571.36
Municipal	789,120.48
Public utility and industrial	4,782,395.59
Total Canadian bonds	$ 8,729,128.68
Total bonds	$31,686,391.42
PREFERRED STOCKS:	
Domestic preferred stocks:	
Railroad	$ 1,974,847.87
Public utility	5,974,843.00
Industrial	11,005,360.25
Total domestic preferred stocks	$18,955,051.12
Canadian preferred stocks	145,855.09
Total preferred stocks	$19,100,906.21
COMMON STOCKS—Domestic	$ 353,052.38
Total investments in securities	$51,140,350.01

The market value of Canadian securities is based upon quotations in Canadian dollars, converted into United States dollars at the "official" buying rate of exchange discount of 10½%.

DETAILS OF INVESTMENTS IN SECURITIES

Description	*Face Amount of Bonds or Number of Shares of Stock*	*Market Value* *
BONDS:		
DOMESTIC BONDS:		
U. S. Government and U. S. Government Institutions:		
Treasury Bonds, 2 %, 1952/50	$ 30,000.00	$ 30,215.70
Treasury Bonds, 2½%, 1952/50	50,000.00	50,625.00
Treasury Bonds, 2¼%, 1954/51	55,000.00	56,529.55
Treasury Bonds, 2 %, 1954/52	15,000.00	15,316.35
Treasury Bonds, 2¼%, 1956/54	35,000.00	36,968.75

INVESTORS DIVERSIFIED SERVICES, INC.

Supplemental Information

YEAR ENDED DECEMBER 31, 1949

Purchases and Sales of Securities

During the year ended December 31, 1949, purchases of securities, other than United States Government bonds, aggregated $19,452,595.32. The aggregate cost of securities sold, other than United States Government bonds, was $20,011,947.19.

Compensation Paid to Officers and Directors

During the year ended December 31, 1949, three of the company's directors were also executive officers and they received no additional compensation for acting as directors. Regular directors' fees paid to the other directors during the year ended December 31, 1949, were $6,749.87. No special compensation was paid to directors.

Compensation to executive officers (excluding assistants to vice presidents, to secretary and to treasurer) aggregated $310,104.39 for the periods during which they held office during the year ended December 31, 1949.

INVESTORS DIVERSIFIED SERVICES, INC.

Accountants' Report

GEORGE ROSSETTER & Co.

CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and
Security Holders of Investors Diversified Services, Inc.:

We have examined the balance sheet of Investors Diversified Services, Inc. as of December 31, 1949, and the statement of net income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We made a similar examination for the year ended December 31, 1948.

Cash, securities, mortgages, and other loans, as set forth in the accompanying balance sheet, were verified by us by count and inspection of the documents on hand; by certifications obtained from depositaries for cash on deposit and for investments held in safekeeping; and by confirmation or inspection of investments deposited with states and provinces or their depositaries. Uncompleted transactions were verified by confirmation with brokers and others. We also received confirmations to the extent we deemed adequate from certain mortgagors and other borrowers as to the correctness of their obligations as shown on the Company's books.

The accounts of two of the Company's Canadian subsidiaries were examined by other independent accountants, and facts as to the book value of investments therein, and earnings applicable to such investments, are reflected herein on the basis of the reports of such accountants. The accounts of other subsidiaries of the Company were examined by us.

As indicated in Section (A) of Note 1 to the accompanying financial statements, the Company does not follow the generally accepted accounting principle of charging income with the cost of increments to mature installment certificates as such certificates progress during the certificate year, but such increments are charged against income only at dates of completion of certificate years, which dates, for the much greater part, do not coincide with the end of the Company's fiscal year. In addition to the reserves provided to dates of last completed certificate years, the Company has provided a special reserve of $3,500,000.00 of which $1,125,644.90 was appropriated from surplus in 1949 and $2,374,355.10 in prior years. The Company also appropriated $239,840.39 from surplus in 1949 and $1,203,143.61 in 1948 (equal in each instance to the remaining balance thereof) to a reserve for contingencies, which reserve is available for improving certificate reserves as well as for other purposes.

Except as to the information contained in Section (B) of Note 1 to the accompanying financial statements, which sets forth the results of a study of the Company's reserves by independent actuaries, and as to which we express no opinion for the reason that the information was not verified by us, in our opinion, based upon the examination made by us and upon the reports of other independent public accountants heretofore referred to, the accompanying balance sheet and statement of net income and earned surplus, together with the notes thereto, fairly present the financial position of Investors Diversified Services, Inc. at December 31, 1949 and 1948, and the results of its operations for the two years ended December 31, 1949, in conformity with generally accepted accounting principles, except as stated in the preceding paragraph, applied on a consistent basis.

GEORGE ROSSETTER & Co.

Minneapolis, Minnesota
March 30, 1950

[fol. 2916]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-359

Investors Diversified Services, Inc.

FIFTY-SEVENTH ANNUAL REPORT **1950**

2134
[fol. 2917]

INVESTORS DIVERSIFIED SERVICES, INC.

ESTABLISHED 1894 *as Investors Syndicate*

Board of Directors

JOSEPH J. ANEALONE	*Allegheny Corporation, Cleveland, Ohio*
GRADY CLARK	*Investors Diversified Services, Inc., Minneapolis, Minnesota*
EARL E. CRABB	*Chairman, Minneapolis, Minnesota*
HENRY J. GUILD	*Brightwater Paper Company, Adams, Massachusetts*
ROBERT W. PURCELL	*Chairman, Executive Committee, Cleveland, Ohio*
GALEN VAN METER	*Vice Chairman, New York, New York*

Principal Officers

EARL E. CRABB	*President*
GALEN VAN METER	*Chairman, Investment Committee*
HARRY C. THOMPSON	*Treasurer*

VICE PRESIDENTS

HAROLD K. BRADFORD	*Government Relations*
HARVEY C. CARR	*Government Relations*
GRADY CLARK	*General Sales Manager*
C. DONALD MCGUIGGAN	*Mortgage Operations*
CLYDE J. MOORE	*Corporate Affairs*
JAMES R. RIDGWAY	*Mortgage Operations*
DONALD E. RYAN	*Mortgage Operations*
NORMAN B. WAAG	*Controller*

Secretary	*Auditor*
CLYDE J. MOORE	THOMAS L. KENEALY

- *Executive offices:* Roanoke Building, Minneapolis, Minnesota
- *Independent Public Accountants:* Peat, Marwick, Mitchell & Co., Minneapolis, Minnesota
- *Stock transferable at the offices of the Company,* Minneapolis, Minnesota

April 30, 1951

Report by the Chairman:

IT IS A PLEASURE to report that your Company enjoyed its greatest success in 1950. Later I shall discuss the year's operating results, but first I want to tell you a few facts about Investors Diversified Services, as I have gathered from many inquiries directed to me that a brief description of our functions is needed.

THE INVESTORS GROUP

Investors Diversified Services is, among other things, a face amount certificate company.* We have not sold our own face amount certificates since 1940. Prior to that date we did offer and sell such securities. Among our principal functions today is the servicing of those old certificates that are still outstanding and the management of reserves set aside for their ultimate redemption.

Investors carries on other substantial activities. It is one of the principal factors in the field of real estate finance. It is North America's largest distributor of investment company securities and manager of investment company funds. As a distributor, Investors sells only face amount certificates issued by one of its subsidiary companies and shares issued by affiliated companies, which are open-end investment companies, usually referred to as "mutual investment companies". Certain data regarding these companies and Investors are presented:

	Date Organized	*Assets as of March 31, 1951*
Parent Company		
INVESTORS DIVERSIFIED SERVICES, INC.	1894	$284,699,441
Face Amount Certificate Companies		
INVESTORS SYNDICATE OF AMERICA, INC.	1940	165,536,828
INVESTORS SYNDICATE TITLE & GUARANTY CO.	1928	32,339,341
INVESTORS SYNDICATE OF CANADA, LTD.	1940	43,922,661 (1)
Mutual Investment Companies		
INVESTORS MUTUAL, INC.	1940	256,850,345
INVESTORS SELECTIVE FUND, INC.	1945	8,991,666
INVESTORS STOCK FUND, INC.	1945	21,800,682
INVESTORS MUTUAL OF CANADA, LTD.	1950	6,022,160 (1)
Total		$820,153,104

(1) Canadian dollars

* Face amount certificates are described in Paragraph 15, Section 2 of the Investment Company Act of 1940. Generally, a face amount certificate of the "installment type" is a security which represents an obligation on the part of its issuer to pay a stated sum at a stated date more than two years after issuance, in consideration of periodic installment payments of a stated amount; a "fully paid" certificate is a similar security the consideration for which is the payment of a single lump sum.

The certificate companies are subsidiaries. Investors Diversified Services is their investment manager and acts as distributor for Investors Syndicate of America. The other two subsidiaries distribute their own issues. The mutual investment companies are owned by their shareholders. Investors, by contract, is investment manager and distributor for the American companies. Investors Syndicate of Canada, Ltd. is the investment manager and distributor for Investors Mutual of Canada, Ltd.

Investors family is a large one. It is comprised of:

	Approximate Number as of March 31, 1951
Those with a beneficial interest:	
Certificate Holders	
Investors Diversified Services, Inc.	151,400
Investors Syndicate of America, Inc.	165,100
Investors Syndicate of Canada, Ltd.	50,700
Investors Syndicate Title & Guaranty Co.	34,200
Shareholders	
Investors Mutual, Inc.	101,500
Investors Stock Fund, Inc.	8,600
Investors Selective Fund, Inc.	3,500
Investors Mutual of Canada, Ltd.	3,500
Total	518,500
Those who own the Company:	
Shareholders	938
Those who operate the Company:	
Directors, Officers, Salesmen and Employees —	
United States	2,912
Canada	395

To summarize — Investors' 3300 employees and sales representatives make their services available to 500,000 certificate and shareholders, and manage for their benefit $820 million.

1950 OPERATIONS

Comparative net earnings were:

	Year Ending December 31 1950	1949
Net Income	$6,036,745	$ 402,607
Share of Subsidiary Net Income	417,666(†)	962,878
Total	$6,454,411	$1,365,485

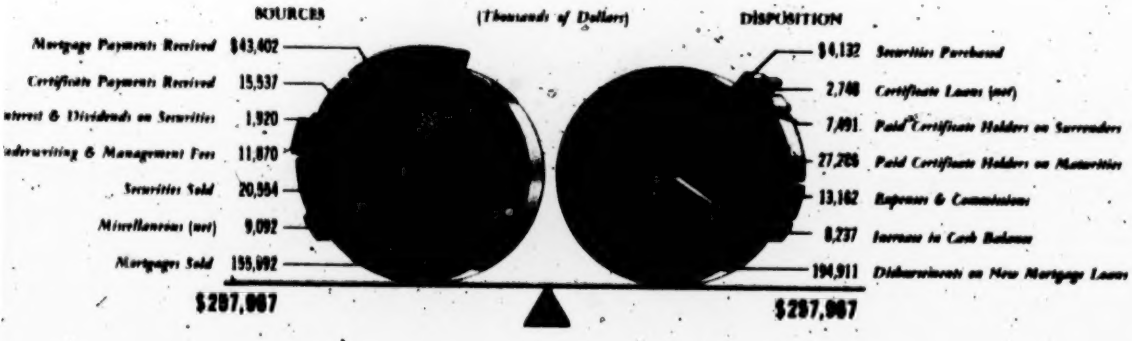
(†) After provision for reserve for unrealized inter-company profits of $500,000.

All such earnings were available for the improvement of reserves to protect certificate holders but they were not available for cash dividend payments to shareholders. Under the Investment Company Act of 1940, investment companies which do not maintain certificate reserves equal to the minimum requirements of that Act are required (in effect) to obtain approval of the Securities and Exchange Commission before pay-

2

Sources and Disposition of Funds

YEAR ENDED DECEMBER 31, 1950



ment of dividends to shareholders. Your attention is also directed to Note 12 to the Financial Statements on page 19 covering other restrictions on payment of dividends.

During the year appropriations from earned surplus, to improve certificate reserves, were $3,001,649; and to contingency reserve, $1,557,016, bringing that reserve, which can be applied to improve certificate reserves, to $3,000,000. Investors, a non-issuing company, is not required to establish minimum reserves as described in the Investment Company Act of 1940 for issuing companies. Nevertheless, it is presently intended to appropriate from future earnings sums adequate to establish and maintain the contingency reserve in an amount which, together with certificate reserves, would aggregate the minimum reserves required under the Investment Company Act of 1940. The amount required for this purpose will be reduced rapidly by maturities and terminations of certificates. This reduction is estimated as follows:

	As of December 31		
	1950	*1951*	*1952*
			Estimated
Approximate additional reserves necessary to be equivalent to those required of issuing companies under the Act	$12,400,000	$9,500,000	$7,000,000
Contingency Reserve	$ 3,000,000		
Capital and Surplus	$ 3,349,469		

It is pertinent to note, at this point, that in this theoretical calculation of reserves to meet the Act's minimum requirements its conservative 3½% investment return is assumed. Actually, Investors has substantial sources of income from non-investment activities and because of this I want to emphasize that, in our opinion, our assets plus earning power are substantially in excess of that required to meet our obligations. The summary of gross income shown below indicates the importance of our non-investment activities:

GROSS INCOME

	1950	1949	Increase
Investment Income			
Income from Investments and Certificate Servicing	$13,292,524	$12,694,970	$ 597,554
Non-Investment Income			
Mortgage Operations	9,664,337	4,184,693	5,479,644
Underwriting Fees	9,588,578	7,659,450	1,928,128
Management Fees	1,313,004	916,400	396,604
Other	243,738	296,935	(53,197)
Total Non-Investment Income	$20,788,657	$13,057,478	$ 7,779,179
Total Gross Income	$34,079,181	$25,702,448	$ 8,376,733

To the end that you may be more fully informed I shall further discuss the summary of gross income under the headings used therein.

INVESTMENT INCOME

For the sake of clarity, I want again to refer to the fact that one of the principal functions of Investors is the servicing of outstanding face amount certificates and the investment management of assets available for their ultimate redemption. Operations in connection with these activities have presented severe problems because the certificates carried an effective rate of return in excess of the rate of investment income which has been available, during the last decade, from securities eligible for our portfolio. Fortunately, as shown in the table below, certificates are being retired rapidly.

Analysis of Installment Certificates

(Face Amount — 000 omitted)

	Series "50,000", "100,000" and "A"	*"B" and "C"*	*"D"*	*"E"*	*"G"*	*Total All Certificates*
Yield to Holder (1)	5%	5%	4.4%	4%	3%	
Outstanding 12-31-40	$66,278	$140,400	$81,944	$445,491	$224,408	$960,521
Net Retirements for the 10 years 1941-1950	85,148	102,869	52,071	227,878	120,952	585,916
Outstanding 12-31-50	6,130	37,531	29,873	217,615	103,456	394,605
Estimated Net Retirement						
1951	1,529	10,804	13,854	18,840	5,784	50,811
1952	1,108	6,599	4,933	30,488	5,664	48,792
1953	836	5,088	3,214	42,418	6,143	57,699
1954	604	3,856	2,112	29,812	13,699	50,083
1955	468	2,946	1,507	18,546	23,586	47,053
5 Year Totals	4,535	29,073	25,620	140,104	54,876	254,208
Estimated Outstanding 12-31-55	1,595	8,458	4,253	77,511	48,580	140,397

(1) On annual payment basis

Analysis of these figures indicates a gradual decline in certificate money costs due to the faster retirement of higher cost certificates, and a sharp decline in both outstanding obligations and assets required for their redemption. These indications, in turn, suggest a rapid diminution of the problems created by high cost certificates, on the one hand, and low income from eligible investments on the other hand.

To return to 1950 operations: during the year a monthly average of approximately $44 millions was employed in construction loans at an average interest rate materially above the going rates on other types of eligible investments. Opportunities to make construction loans fluctuate with building activities. Presently, material controls and credit restrictions indicate a sharp decline in such opportunities.

Also during the year there was a constant pressure on interest rates. FHA mortgage rates were reduced and yields on corporate obligations and preferred stocks declined. In March 1951 the Federal Reserve Board, as an anti-inflation measure, lowered its support price for government issues which has, so far, had the effect of increasing yields on newly purchased securities with a consequent downward pressure on the market value of securities in portfolio. We are not optimistic about the trend toward increasing yields continuing beyond 1951. The supply-demand situation is not favorable. For some years savings seeking investments have been growing faster than the supply of new investment securities. This trend has been accelerated recently by the setting aside of large sums of money for employee-labor pensions — a practice that can be expected to grow.

NON-INVESTMENT INCOME

Income from Mortgage Operations — Three years ago we expanded the scope of our services rendered to builders in connection with the development of home communities and suburban shopping centers. Architectural and engineering staffs, and other new personnel, were added to the Mortgage Division with the result that the volume of construction loans increased sharply.

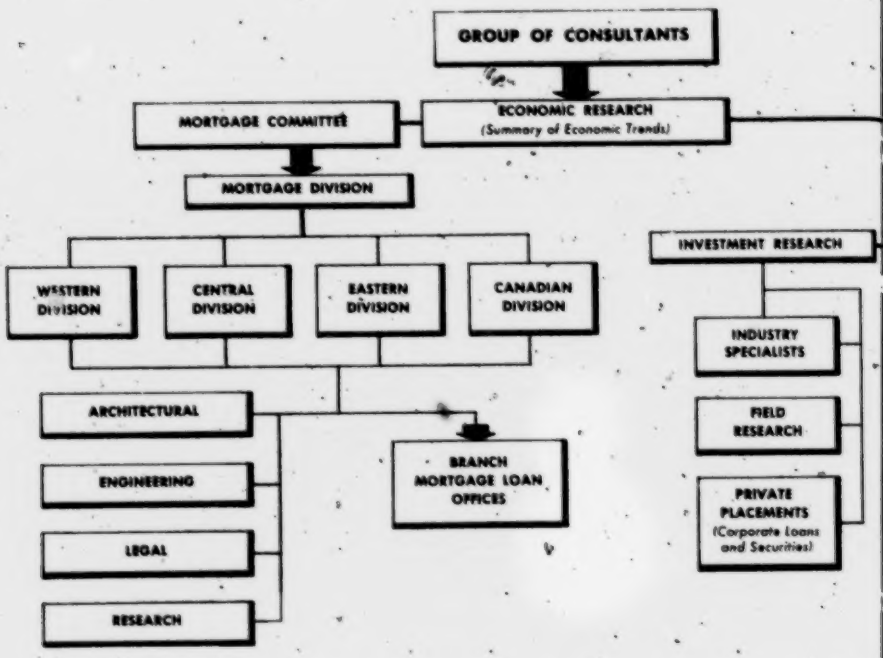
This has proved profitable in at least two ways:

First — as previously noted, rate of interest on construction loans is higher than rate of income from other eligible investments. This added income is reflected in investment income.

Second — fees are collected in connection with such loans, or, in lieu thereof, we negotiate a minority participation in the profits from the sale of the improved properties. These profits are reflected in the item "construction loan fees" which appears in the table on page 6.

A result of increased construction loans was the creation of permanent mortgages in excess of our portfolio requirements: mortgages that could be made available to other financial institutions, usually at a premium, and in which we could retain a profitable servicing contract.

During 1950, Investors helped finance several of the community business centers that are a comparatively recent accompaniment to the nation-wide "city to suburbs" movement. This type of construction can only be understood in the light of the kind of housing that has been built in the last few years — whole villages, whole communities, pre-planned before the first foundation is poured. This mass building has made possible and necessary the creation of whole new business centers; not mere shopping centers.



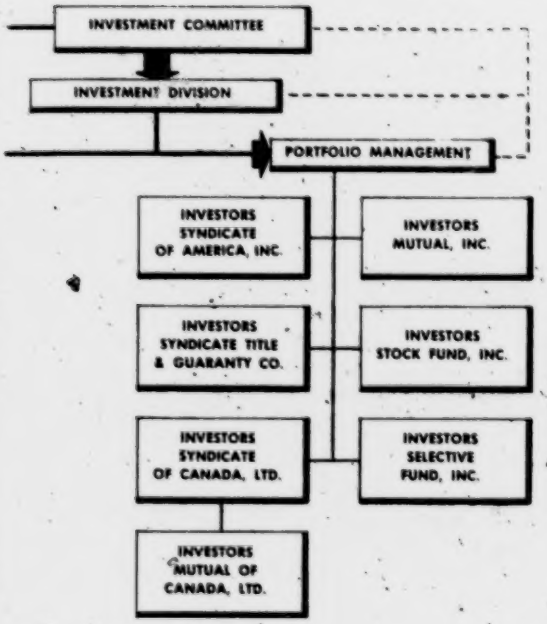
but structures pre-planned for commercial, professional, amusement and even civic uses, built in the heart of the newly developed areas.

Although government restrictions have curtailed such developments, it is our present intention to continue to finance them when controls permit us to do so.

An experienced mortgage staff of 350 employees working out of offices in twenty cities produced these results:

	1950	1949
Gross Income:		
Construction Loan Fees	$6,946,270	$2,424,813
Premiums on Mortgages Sold	1,127,217	632,598
Service Fees	1,127,090	769,745
Other Income	463,760	337,537
Total Gross Income	$9,664,337	$4,164,693

[fol. 2924]



Few organizations have the resources required to maintain and to use as many safeguards as Investors Diversified Services, Inc. employs to protect investments in both mortgages and corporation securities. This chart illustrates the approach to investment management of our assets and those of our affiliated and subsidiary companies.

	1950	1949
Direct Expenses:		
Branch Office Operating Expenses	$1,111,169	$ 815,404
Service Fees Paid	505,449	578,411
Other Direct Expenses	555,729	814,859
Total	$2,172,347	$2,208,674
Income from Mortgage Operations before Home Office and General Expenses	$7,491,990	$1,956,019

As pointed out previously, opportunity to make construction loans depends upon the volume of building. Such opportunities will unquestionably be reduced during the mobilization period.

Income from Underwriting Fees — There is no other security distributing organization that is at all comparable to Investors. Our men sell only shares and certificates issued by the Investors Group. No one else is permitted to sell these securities. In round figures,

we have 1900 salesmen working out of 100 offices who produced the following results for the parent company:

Gross Underwriting Fees from:	1950	1949
Investors Syndicate of America, Inc.	$4,900,423	$4,473,002
Mutual Investment Companies	4,636,855	3,156,448
Total	$9,565,578	$7,629,450
Less:		
Compensation paid salesmen	$6,412,089	$5,083,011
Income from underwriting before other Operating and General Expenses	$3,153,489	$2,546,439

Income from Management Fees — The Investment Division of the Company initiates overall investment policies, manages the corporate and government issues in portfolios and negotiates directly with corporations to purchase "private placement"[2] issues.

I think you would like to know how we formulate our investment policies. Once each quarter our Investment Committee, comprised of the Board of Directors of Investors, Mortgage Portfolio Managers, and Corporate Security Portfolio Managers meets with a group of outstanding economists — specialists in the important political, social and economic fields. Included are recognized scholars and authorities on foreign affairs, government, agriculture, labor, construction, and money. At the conclusion of this meeting a paper is prepared which reflects the opinions of these consultants as to probable future economic trends.

At a subsequent meeting the Investment Committee measures the probable impact of these trends on our economy. The end results are decisions with respect to the division of portfolios by security classifications, i.e., real estate mortgages, bonds, preferred stocks, common stocks, etc., and, in the case of corporate securities, the diversification of portfolio by industry classification. These decisions are reviewed by the appropriate Boards of Directors and, subject to change or policy decision by the Boards, are sent in written form to Portfolio Managers as their operational policy for the ensuing three months. Portfolio Managers conduct portfolio operations assisted by experienced real estate and corporation investment analysts and their staffs.

Real estate mortgage service fees are reflected in "Income from mortgage operations". Gross income earned from supervision of corporate investments was:

	1950	1949
Face Amount Certificate Companies	$ 174,615	$ 208,973
Mutual Investment Companies	1,138,389	707,427
	$1,313,004	$ 916,400

[1] Investors Syndicate Title & Guaranty Co. and Investors Syndicate of Canada, Ltd. distribute their own securities.

[2] "Private placements" are securities purchased directly from issuing corporations, usually by a small group of financial institutions, for long-term investment. If such securities were offered to an unlimited group, it would probably be a "public offering" and require registration with the Securities and Exchange Commission.

Assets of the certificate companies are substantially real estate mortgages. Fees for management of corporate investments are influenced by sales and redemptions of shares and certificates, and market fluctuations. Thus, a declining market could adversely affect such fees without a corresponding reduction in expenses.

SUBSIDIARY INCOME

Share of subsidiary income was comprised of the following items:

	1950	1949
Investors Syndicate of America, Inc.	$ 424,540	$ 650,505
Investors Syndicate of Canada, Ltd.	383,892	322,101
Investors Syndicate Life & Guaranty Co.	29,024	127,136
Minor Subsidiaries	250,005	119,036
Total	$1,087,000	$1,127,878
Less:		
Dividends received from minor subsidiaries included in income	$ 170,000	$ 165,000
Reserve for unrealized inter-company profits	500,000	
Total	$ 670,000	$ 165,000
Balance (Increase in undistributed earnings)	$ 417,000	$ 962,878

Income of the major subsidiaries is unlikely, in the foreseeable future, to become available to the parent Company in the form of cash dividends. These companies are growing and will need their income to finance operations.

OUTLOOK

Experience in the first quarter and our budgeted projections for 1951 indicate a satisfactory income for the year — although materially below that for 1950. I anticipate further improvement in the financial condition of the Company over the strongest position in its history reached at the end of the last year.

CONCLUSION

Your Company encourages thrift. Thrift is and has been the most practical means for most people of achieving financial independence. Today it is particularly important because, since both private *and* public thrift combats rising prices of consumer's goods, it also — and vitally — serves the needs of the nation.

In conclusion, and on behalf of the Board, I want to express my sincere appreciation to our certificate holders and shareholders for their continued goodwill, and to our entire personnel for their loyalty and efficient services which contributed importantly to the outstanding results achieved in 1950.

By order of the Board of Directors

E. E. Crabb

CHAIRMAN OF THE BOARD
AND PRESIDENT

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[fol. 2927]

INVESTORS DIVERSIFIED SERVICES, INC.

Balance Sheet, DECEMBER

ASSETS (Notes 2 and 3)

QUALIFIED ASSETS (NOTE 4):			
Cash			
On hand and in banks (Note 5)		$ 5,530,200	
Deposited with Certificate Depositaries, states and provinces		7,578,375	$ 13,008,575
SECURITIES (Notes 6 and 7)			
Bonds and notes—at amortized cost	*Market Value*		
United States Government direct obligations	$ 2,847,179	$ 2,828,824	
Other bonds and notes	16,339,343	16,407,191	
Preferred stocks—at average cost less allowance for issue in arrears	16,652,226	18,314,754	37,550,769
	$35,838,748		
MORTGAGES ON REAL ESTATE—Principal balances, less allowances (Notes 6 and 8)			
First mortgages			
Insured or committed for insurance by Federal Housing Administration		$59,534,365	
Partially guaranteed by Veterans Administration		52,265,983	
Other first mortgages and first liens on real estate		92,037,459	
Second mortgages—fully guaranteed by Veterans Administration		9,255,516	213,093,323
LOANS TO CERTIFICATE HOLDERS—Not in excess of applicable certificate reserves (Note 6)—includes $667,280 on certificates issued by subsidiary			12,604,908
REAL ESTATE—at depreciated cost—acquired through foreclosure of mortgages			323,444
INTEREST AND DIVIDENDS RECEIVABLE ON QUALIFIED INVESTMENTS			1,223,265
DUE FROM BROKERS			341,987
Total qualified assets			$278,236,271
OTHER ASSETS:			
Investments in and receivables from subsidiary companies:			
Investments in common stock—at book value of underlying net assets, less allowance (Note 9)		$ 5,733,856	
Receivables		1,941,964	
Other investments in securities—at cost—market value $689,350		614,555	
First mortgages on real estate—principal balances		1,242,822	
Unimproved real estate—at cost		106,920	
Other receivables—less allowances		1,211,226	
Equipment, and leasehold improvements—at cost less depreciation and amortization		801,339	
Other		239,007	11,890,889
			$290,127,160

See accompanying

1950

LIABILITIES (Note 2)

Certificate Reserves (Notes 1 and 4)		
Installment certificates		
Reserves to mature		
Cash surrender values attained at dates of last completed certificate years	$231,127,803	
Reserve payments applicable to current certificate years	15,258,731	
Reserves to stabilize financing costs	10,823,227	
Other	1,752,095	
Payments made in advance of current certificate years' requirements and accrued interest thereon	11,003,928	
Fully paid certificates, reserves to mature	8,425,965	
Due to unlocated certificate holders	105,199	$278,496,450
Current Liabilities, Exclusive of Certificate Liabilities		
Accounts payable:		
Commissions due to sales representatives	$ 292,495	
Subsidiary companies	74,612	
Sundry creditors	520,777	
Unearned interest on loans	189,542	
Undistributed collections from mortgagors and certificate holders	72,973	
Accrued taxes:		
Income (Note 10)	2,889,788	
Other	64,389	
Accrued sales representatives' incentive pay bonus	400,919	
Other accrued expenses	29,629	4,538,124
Note Payable to Affiliated Company, subordinated		137,290
Deferred Credit—Mortgage construction loan fees (Note 11)		605,837
Capital Stock and Surplus:		
Capital stock:		
Common Class "A" (Not preferred and non-voting)—$5 par—authorized, 260,000 shares; outstanding, 175,836.37 shares	$ 879,182	
Common — $5 par — authorized, 140,000 shares; outstanding, 114,908.16 shares	574,541	
Earned surplus, per accompanying statement (Notes 9, 12, 13 and 14):		
Appropriated for contingencies	3,000,000	
Unappropriated	1,595,748	6,349,469
		$290,127,190

to financial statements.

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[fol: 2929]

INVESTORS DIVERSIFIED SERVICES, INC.

Statement of Net Income

FOR THE YEAR ENDED DECEMBER 31, 1950

Gross Income		
Investment and certificate servicing income:		
Interest on bonds, mortgages, and other loans	$11,770,958	
Cash dividends on stocks (includes $170,000 from a subsidiary)	1,026,153	
Installment certificate loading and servicing income (Note 13)	495,413	
		$13,292,524
Mortgage operations:		
Premiums on mortgages sold (includes $820,396 from subsidiaries)	$ 1,127,217	
Service fees (includes $659,439 from subsidiaries)	1,127,090	
Construction loan fee income	6,946,270	
Other mortgage income	463,760	
		9,664,337
Underwriting fees from subsidiary and affiliated companies		9,565,578
Management fees from subsidiary and affiliated companies		1,313,004
Other income (includes $132,296 collection fees from a subsidiary)		243,738
Total gross income		$34,079,181
Costs and Expenses		
Provision for certificate reserves, less recoveries of $327,346 from lapses and surrenders (Note 1)	$12,417,208	
Mortgage branch office and agency expenses, including salaries of $949,522 and after charges to a subsidiary of $141,180	2,172,347	
Collection and sales agency expenses	741,213	
Commissions and incentive pay bonuses to sales representatives	6,412,089	
Other expenses, including salaries of $2,558,094 and after charges to subsidiaries of $576,859	3,735,880	
Total costs and expenses		25,478,737
Operating Income		$ 8,600,444
Income Credits, including $75,559 reduction in provision for exchange discount		133,788
Loss on Sales of Investments		(105,487)
Income Before Provision for Income Taxes		$ 8,628,745
Provision for Income Taxes:		
Federal normal and surtaxes (Note 10)	$ 2,815,000	
State	40,000	
	$ 2,855,000	
Less net amount applicable to deferred construction loan fees (Note 10)	263,000	
		2,592,000
Net Income for the Year		$ 6,036,745

See accompanying notes to financial statements.

Statement of Earned Surplus

FOR THE YEAR ENDED DECEMBER 31, 1950

UNAPPROPRIATED

BALANCE AT BEGINNING OF THE YEAR	Nil
NET INCOME FOR THE YEAR per accompanying statement	$ 6,030,745
PROPORTIONATE SHARE OF EARNINGS OF SUBSIDIARY COMPANIES FOR THE YEAR, less dividends of $170,000 included in income, and less allowance of $500,000 for unrealized inter-company profit on mortgage transactions	417,666
GROSS SURPLUS	$ 6,454,411
DEDUCTIONS:	
Appropriation for additional installment certificate reserves to provide for accrual of increments (Note 1B)	$ 3,001,649
Appropriated for contingencies	1,557,016
Total	$ 4,558,665
BALANCE AT END OF THE YEAR	$ 1,895,746

APPROPRIATED FOR CONTINGENCIES (See Chairman's Letter)

BALANCE AT BEGINNING OF THE YEAR	$ 1,442,984
TRANSFERRED FROM UNAPPROPRIATED SURPLUS	1,557,016
BALANCE AT END OF THE YEAR	$ 3,000,000

See accompanying notes to financial statements.

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements

DECEMBER 31, 1950

1. CERTIFICATE OBLIGATIONS AND RESERVES THEREON

(A) The Company has outstanding eight series of installment certificates which were issued prior to 1941. The certificates provide for stipulated payments by the holder for periods ranging from ten to fifteen certificate years. The Company agrees to pay the face amount of the certificate at maturity or the specified cash surrender values designated in the certificates prior thereto. If a payment is not made when due the maturity date is extended by the period of delay, and the certificate does not increase in value during such periods. Payments made in advance of due dates draw interest bearing in accordance with the terms thereof. The rate of return to the holders varies according to series and is also affected by delays in making payments and terminations prior to maturity. The Company also has outstanding certain interest bearing obligations designated as fully paid certificates, which for the most part represent contractual conversions from installment certificates.

The Company is not subject to the reserve standards of the Investment Company Act of 1940, including the limitation of the maximum reserve rate to 3½%, which, if used, would require larger reserves. The Company's reserves are based upon rates which differ by series of certificates and also to a minor extent from year to year within each series. Reserves are maintained for fully paid certificates and advance payments at the stipulated rates. The rates of net cost to average monthly comparable reserve balances were as follows:

	Year 1950	*Year 1949*
Increments on installment certificates	4.40%	4.60%
Interest on advance payments	2.53	2.63
Interest on fully paid certificates	3.99	4.05
Combined	4.37%	4.54%

At December 31, 1950 there were outstanding installment certificates with a maturity value of $394,605,594. Approximately $272,000,000 maturity value of these certificates had five or less certificate years remaining to their maturity. Of this amount certificates with a maturity value of $210,750,000 have a non-callable option to continue payments for a period of 10 years with a decrease in the rate of cost of approximately ½ of 1%.

(B) Prior to January 1, 1950, the Company provided increments to installment certificate reserves from income each month upon completion of certificate years, but had appropriated $5,500,000 from surplus to improve its reserves. As of that date, the Company adopted the practice of providing for such increments from income as the certificates progress during the certificate years, and adjusted its reserves to the accrual basis by a charge of $3,001,649 to surplus. Net income for 1950 would have been approximately $495,000 less on the basis previously employed.

(C) The Company engaged an independent firm of actuaries, Joseph Froggatt & Co., Inc., of New York City, to make an analysis of the Company's installment certificates outstanding as to duration, and experience as to lapses, stretch outs and surrenders thereon. They also made a study of the Company's earnings during the years 1940 through 1943, inclusive, which showed that the average net earnings (exclusive of net earnings or losses from trading and from distribution of securities for affiliated companies, net earnings of wholly owned subsidiaries, and profits and losses from sale of portfolio securities) was 4.5338% of the Company's total assets. A comparison between the reserves computed by the actuaries on this 4.5338% basis, the reserves actually maintained by the Company, and the approximate reserves that would have been provided on the basis of a theoretical rate of improvement of 3½% (after allowances for unrealized cost reductions from delinquent payments and surrenders) is as follows:

(000 Omitted)

December 31	*Face Amount of Installment Certificates Outstanding*	*Reserves per Actuaries Computation**	*Applicable Installment Reserves Maintained by Company*	*Approximate Reserves Computed on Theoretical 3½% Basis*
	(Before Exchange Discount on Canadian Amounts)			
1943	$648,149	$168,277	$160,477	$190,302
1944	593,584	183,529	176,358	203,973
1945	557,231	202,372	196,157	221,854
1946	530,202	222,883	217,163	241,050
1947	505,754	243,866	238,442	260,414
1948	476,114	258,676	254,054	273,204
1949	440,596	265,509	262,604	277,817
1950	394,605	258,130	258,649	268,122

*Based on 4.5338% rate

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1950 *Continued*

The Company has developed sources of income other than its pure investment income from which it expects to receive additional net earnings. Such other sources of income include that realized from mortgage operations and management and underwriting fees received from affiliated and subsidiary companies.

2. CANADIAN ASSETS AND LIABILITIES.

The book value of net assets employed in Canada at December 31, 1950 aggregated $639,446 ($22,819,594 in assets less $22,180,148 in liabilities), after conversion into United States dollars, at the buying rate of exchange at that date, of all Canadian items except assets payable in United States funds. Canadian assets are realizable in United States currency only by permit from the Canadian Exchange Control Board.

Unrealized loss on exchange conversion amounted to $39,053 at December 31, 1950. Canadian operations are reflected in the income statement on a dollar for dollar basis, except that adjustments of the unrealized loss on exchange conversion are made by charge or credit thereto.

3. DEPOSITS OF ASSETS.

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of The State of Minnesota pursuant to Chapter 59, Minnesota Statutes, 1945, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of December 31, 1950 the following assets were so deposited:

(After exchange discount on Canadian amounts)

		Deposits		
	At Book Value	*At Values Prescribed Under Agreements*	*Required Deposits*	*Excess*
Deposits to meet certificate liability requirements:				
States and Provinces	$137,586,027	$137,573,493	$135,493,518	$ 2,079,975
Central Depositary	123,313,740	122,675,723	110,557,736	12,117,987
Total	$260,899,767	$260,249,216	$246,051,252	$14,197,964
Deposits with States and Provinces to meet licensing requirements	225,000	225,000	225,000	
Total	$261,124,767	$260,474,216	$246,276,252	$14,197,964

The deposits consisted of cash, $7,578,375, securities at book value of $38,124,355, mortgages with unpaid balances of $209,082,747, loans secured by certificates issued by a subsidiary of $652,879, investments in subsidiaries at book value of $5,544,424, and amounts due from brokers for securities sold of $141,987.

The above deposits included assets with an aggregate book value of $7,199,232 which were qualified under the terms of the deposit agreements but not under the conditions of certificates. The difference of $650,549 between the book values of assets deposited and the values of such assets on bases prescribed under conditions of deposit agreements, consists principally of the excess of the book value of investments in common stocks of subsidiaries, which for purposes of valuation under the central deposit agreement are included at 80% of the Company's equity in net assets of the companies.

4. REQUIREMENTS AS TO QUALIFIED ASSETS.

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to such asset ratio maintenance provisions.

In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or

INVESTORS DIVERSIFIED SERVICES, INC.

Notes to Financial Statements, December 31, 1950 Continued

assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At December 31, 1950, the Company was required to maintain qualified assets in the amount of $250,598,540 (exclusive of certificate loans), and as indicated in the accompanying balance sheet, the Company had qualified assets at that date in excess of such amount. The nature of the qualified assets and the amount thereof are not subject to the provisions of Section 28 of the Investment Company Act of 1940.

5. CASH.

At December 31, 1950, the Company held funds collected from mortgagors for future payments of taxes and insurance, and agency collections for others in the aggregate amount of $3,660,051. Drafts issued by the Company which had not been presented for payment at that date aggregated $1,634,924. These amounts, aggregating $5,294,975, have been deducted from the cash balances and from the contra liability accounts.

6. GROSS RATES OF RETURN ON INVESTMENTS.

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on securities, mortgages, and certificate loans for the years of 1950 and 1949, based upon the monthly average book values of the investments, were as follows:

	Year 1950	*Year 1949*
Securities	3.99%	3.68%
Mortgages	4.73	4.56
Certificate Loans	5.14	5.22
Combined	4.76%	4.39%

7. SECURITIES.

The market values of listed and active securities are based upon closing published market quotations. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that in the absence of available quotations, 26 issues were priced at their cost of $9,648,456 and one issue in arrears as to dividend payments at $169,322 less than cost, which in the opinion of the Board of Directors represented fair market values. The market value of Canadian securities is based upon quotations in Canadian dollars, converted into United States dollars at the buying rate of exchange. A list of securities is included as part of this report.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1950 were fully income producing and not in default except for one issue of preferred stock on which dividends were in arrears and which was carried at $169,322 less than cost. The carrying values of securities at December 31, 1950 exceeded the market values thereof in the amount of $1,647,225, a decrease in unrealized depreciation of $904,221 from December 31, 1949.

Premiums and discounts on bonds are amortized on a yield basis to maturity.

8. MORTGAGES AND MORTGAGE COMMITMENTS.

Mortgages are carried at principal balances less unamortized discounts and allowances of $345,214. Commitments in respect of mortgages at December 31, 1950 aggregated approximately $83,000,000, including $31,967,421 on which partial disbursements had been made.

The aggregate principal balances of mortgages of the self-amortizing type held at December 31, 1950 were $178,203,358.

The principal balances of mortgages in respect of which principal or interest payments were past due for more than three months at December 31, 1950, were $4,109,045. Of this amount $2,253,254 represented mortgages insured by the Federal Housing Administration or partially or fully guaranteed by the Veterans Administration.

9. INVESTMENTS IN SUBSIDIARIES.

Investments in subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets, less an allowance of $500,000 for unrealized inter-company profit on mortgage transactions. The book value of securities held by subsidiaries at December 31, 1950, was $571,967 in excess of market values.

As in previous years, no provision has been made in the financial statements for income taxes which would accrue if undistributed profits of subsidiaries were paid as dividends to the Company. Consolidated Federal income tax returns have been filed by the Company and its domestic subsidiaries for all years subsequent to 1941 and no tax is payable on the dividends received in years in which such returns are filed. Also, a credit is allowed against the tax payable on dividends received from Canadian subsidiaries for Canadian income taxes paid.

Credits to earned surplus for undistributed earnings of subsidiary companies aggregated $4,083,430 at

Notes to Financial Statements, December 31, 1950 Continued

December 31, 1950. The earned surplus of Investors Syndicate of America, Inc., one of the Company's subsidiaries, is restricted as to dividend payments during 1950 by reason of declaration of additional credits for that year at a rate lower than the minimum which could be declared without such restriction. The granting of additional credits during the year ended December 31, 1950 at a rate necessary to remove this restriction would have increased expenses of that company by approximately $230,000. Credits to earned surplus for undistributed earnings of that subsidiary aggregated $2,272,947 at December 31, 1950.

10. Income Taxes.

By reason of the provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries and the Company intends to elect to file on that basis. On a separate return basis the federal income tax provision for the year ended December 31, 1950 would have been approximately $2,970,000, including $233,000 for excess profits tax, as compared with the provision of $2,815,000 on a consolidated tax basis. No excess profits tax was payable on a consolidated tax basis. The Bureau of Internal Revenue has not completed examination of federal income tax returns for years subsequent to 1948, and taxes for those years have not been finally determined.

Income taxes applicable to deferred construction loan fees (see Note 11) aggregated $415,000 at December 31, 1950 and $152,000 at December 31, 1949, resulting in a net increase in the amount of the provision allocated to deferred income for the year 1950 of $263,000.

11. Deferred Construction Loan Fees.

Fees on construction loans are subject to income taxes in the period received whereas on the book basis they are taken into income as earned. Income taxes applicable to such fees received but deferred on the books are allocated to deferred construction loan fees, and are charged to operations in the period in which the fees are taken into income. Fees deferred at December 31, 1950 are shown net after reduction of $415,000 of income taxes applicable thereto.

12. Dividend Restrictions.

Undistributed earnings of subsidiaries included in surplus aggregating $4,083,430 at December 31, 1950 are not available for dividends until paid to the Company.

According to the terms of the Series "G" certificates, no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series "G" certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series "G" certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Payment of additional credits on Series "G" certificates at the rate necessary to remove the dividend restriction in 1950 would have increased expenses by approximately $250,000.

Under sub-section (h) of Section 28 of the Federal Investment Company Act of 1940, the Company may be restricted from paying dividends to its stockholders.

13. Contingent Mortgage Repurchase Agreement.

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 96.8% owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on December 31, 1950, were subject to such repurchase agreements aggregated $19,573,228 including $13,446,569 of FHA insured mortgages.

14. Contingent Liability Under Securities Act of 1933.

The Company acts as principal underwriter for its subsidiary, Investors Syndicate of America, Inc., a face-amount certificate company. In making sales of face amount certificates during the period from April 28 to May 23, 1949, inclusive, a prospectus was used which did not contain information as to the acquisition, on April 27, 1949, of the controlling shares of stock of Investors Diversified Services, Inc., by Alleghany Corporation from Mr. Bertin C. Gamble. Approximately $1,085,000 was paid in to December 31, 1950 on certificates sold during this period. With respect to such sales the Company may or may not be liable under Section 12 of the Securities Act of 1933 but it does not admit any such liability.

15. Service Fees and Loading Credits on Installment Certificates.

Service fees and loading credits on installment certificates are taken into income as received. The service fees represent charges made to certificate holders on installment payments made on less than an annual basis to cover the additional costs involved in making the collections, additional record keeping, and the loss of the use of funds. The loading credits, for the most part, represent amounts deducted from installment payments to cover annual costs incident to servicing the certificates.

INVESTORS DIVERSIFIED SERVICES, INC.

Investments in Securities

DECEMBER 31, 1950

SUMMARY OF INVESTMENTS IN SECURITIES

Description	*Market Value**
BONDS AND NOTES:	
Domestic:	
U. S. Government – direct obligations	$ 2,837,179
U. S. Government chartered institutions	160,050
Financial institutions	4,415,158
Industrial	4,501,635
Public utility	414,675
Transportation	1,341,925
Canadian:	
Dominion Government and Dominion Government guaranteed	1,201,925
Provincial	790,425
Municipal	696,600
Financial institutions	1,171,901
Industrial	1,330,921
Public utility	441,011
Transportation	138,976
Total bonds and notes	$19,442,381
PREFERRED STOCKS:	
Domestic:	
Financial institutions	$ 407,300
Industrial	8,344,202
Public utility	5,535,598
Transportation	2,365,724
Canadian:	
Industrial	12,729
Public utility	22,773
Total preferred stocks	$16,688,326
COMMON STOCKS–Domestic	$ 387,391
Total investments in securities	$36,518,098
CLASSIFICATION IN ACCOMPANYING BALANCE SHEET:	
Under qualified assets	$35,828,748
Under other assets	689,350
Total, as above	$36,518,098

* *See Note 7 to financial statements for basis of valuation.*

[fol. 2935]

INVESTORS DIVERSIFIED SERVICES, INC.

Supplementary Information

YEAR ENDED DECEMBER 31, 1950

PURCHASES AND SALES OF SECURITIES

During the year ended December 31, 1950, purchases of securities, other than United States Government bonds, aggregated $4,125,600. The aggregate cost of securities sold, other than United States Government bonds, was $16,770,875.

COMPENSATION PAID TO OFFICERS AND DIRECTORS

During the year ended December 31, 1950, three of the Company's directors were also executive officers and they received no additional compensation for acting as directors. Regular directors' fees paid to the other directors during the year ended December 31, 1950, were $9,375. Special compensation of $1,800 was paid to a director for investment advisory services.

Compensation to executive officers (excluding assistants to vice presidents, to secretary and to treasurer) aggregated $310,573 for the periods during which they held office during the year ended December 31, 1950.

Copies of this Report are being made available to banks, and financial agencies and institutions, for their files for ready reference. This material, under no circumstances, is to be used in the solicitation of applications for investment certificates.

Accountants' Report

PEAT, MARWICK, MITCHELL & CO.
NORTHWESTERN BANK BUILDING
MINNEAPOLIS 2, MINN.

To the Board of Directors and Security Holders of Investors Diversified Services, Inc.

We have examined the balance sheet of Investors Diversified Services, Inc. as of December 31, 1950 and the statements of net income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We secured direct confirmation of the securities owned at December 31, 1950 from the custodians as to those on deposit and in safekeeping, and from brokers with respect to uncompleted transactions.

The amount of the investment in the Company's principal Canadian subsidiary and the earnings applicable to such investment are reflected herein on the basis of an examination made by other independent public accountants. Information with respect to the Company's reserves on installment certificates as set forth in Note 1 (C) to the financial statements is based upon reports of an independent firm of actuaries and was not verified by us.

In our opinion, based upon the examination made by us and the report of other independent public accountants referred to in the preceding paragraph, the accompanying balance sheet and the statements of net income and earned surplus present fairly the financial position of Investors Diversified Services, Inc. at December 31, 1950 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year, except for the change made in respect to the provision for increments on installment certificates referred to in the accompanying Note 1 (B) which meets with our approval.

PEAT, MARWICK, MITCHELL & Co.

Minneapolis
April 16, 1951

FIFTY-SEVENTH ANNUAL REPORT 1950

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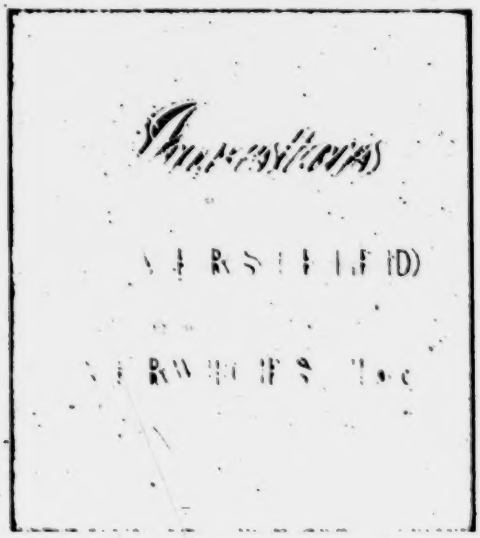
[fol. 2938]

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-361



58th Annual Report

for the Year Ended December 31, 19

Investors Diversified Services, Inc.

FIFTY-EIGHTH ANNUAL REPORT · 1951

April 30, 1952

REPORT BY THE CHAIRMAN:

The results of your Company's operations in 1951 were generally satisfactory. Net earnings were the second highest in the Company's history in spite of a decline in mortgage operations due to materials restrictions.

Gross income for the year amounted to $31,760,797 compared with $34,079,181 in 1950. Net earnings including share of undistributed subsidiary net income were $4,125,748, a decline of $2,328,663 from the previous year. Further improvement in the financial position of the Company was accomplished and at the year-end, our financial condition was at the strongest point in our history.

Before discussing the year's operations in detail, however, I wish to present a brief review of the nature of the Company's business for the benefit of those who may not be too familiar with our activities.

The Investors Group

INVESTORS Diversified Services and its subsidiaries and affiliates are known as the "Investors group." The activities of the companies which comprise this group are outlined on the following page.

I want to stress the fact that these assets do not represent the holdings of a few individuals, but rather the accumulations of many thousands of people in all walks of life—a number currently in excess of half a million.

Copies of this Report are being made available to banks, and financial agencies and institutions, for their files for ready reference. This material, under no circumstances, is to be used in the solicitation of applications for investment certificates.

	Date Organized	Assets as of March 31, 1952
INVESTORS DIVERSIFIED SERVICES, INC.	1894	$272,083,371

This, the parent company of the Investors group, is a Minnesota corporation operating under a charter granted in July, 1894. From that date to December 31, 1940, its principal business consisted of issuing and selling its own face amount certificates and of investing the proceeds from such certificates. Today its principal activities, in addition to the investment management of its own assets, are to act, by contract, as the sponsor and distributor for certain of its subsidiary and affiliated companies and as the investment manager for them.

INVESTORS SYNDICATE OF AMERICA, INC.	1940	$197,827,882

An investing face amount certificate company with assets primarily in the real estate field. "I.S.A." has always played an important role in home ownership. Today it is, in addition, financing an increasing number of large-scale housing projects and shopping centers, subject to government restrictions in the building field.

INVESTORS SYNDICATE TITLE & GUARANTY CO.	1928	$ 33,670,778

This New York State subsidiary of IDS invests primarily in mortgages, both in and out of New York. The company distributes its own face amount certificates in that state.

INVESTORS SYNDICATE OF CANADA, LTD.	1940	$ 51,960,674*

This IDS subsidiary sells its own face amount certificates and distributes the shares of its mutual affiliate, identified below, for which it also acts, by contract, as investment manager. Its own investments largely consist of Canadian mortgages and other Canadian securities.

INVESTORS MUTUAL, INC.	1940	$357,638,108
INVESTORS SELECTIVE FUND, INC.	1945	$ 10,943,884
INVESTORS STOCK FUND, INC.	1945	$ 36,320,783

These are three open-end investment companies of the mutual type, commonly known as "mutual funds". Each of them is owned by its shareholders, and hence are IDS affiliates rather than subsidiaries. Investors Diversified Services is, by contract, their investment manager and principal underwriter. While the portfolio of each of them is widely diversified and fully managed, each has a different investment objective. Investors Stock Fund holds a broadly diversified cross section of common stocks, emphasizing the growth factor. Investors Selective Fund is virtually limited to debt obligations and preferred stocks, while Investors Mutual, largest of the three, is a "balanced" fund, holding both senior securities and common stocks in its portfolio.

INVESTORS MUTUAL OF CANADA, LTD.	1950	$ 14,920,384*

This company is, in effect, the Canadian equivalent of the American Investors Mutual; it is an open-end investment company of the "balanced" type. Its investments are primarily, but not exclusively, in Canadian securities. Investors Syndicate of Canada is, by contract, its investment manager and the distributor of its shares, which are sold only in Canada.

*Canadian dollars

Thus the total gross assets of the companies comprising the Investors *group are* $[redacted]

Operations in 1951

Comparative net earnings for the past two years were:

	Year Ended December 31 1951	1950
Net Income	$3,033,331	$6,038,745
Share of undistributed Subsidiary Net Income*	1,092,217	417,666
TOTAL	$4,125,548	$6,454,411

*After deduction of reserve for unrealized profits of company profits of $221,000 in 1951 and $500,000 in 1950.

These earnings are subject to certain restrictions in regard to dividend payments to stockholders as shown in note 12 of the "Notes to Financial Statements" on page 22 of this report. One of these restrictions is the requirement (in effect) that face amount certificate companies which do not maintain minimum certificate reserves as defined in the Investment Company Act of 1940 may not pay dividends without prior approval of the Securities and Exchange Commission.

Essentially the 1940 Act requires issuing companies, whose certificates qualify thereunder, to maintain certificate reserves which, assuming an investment return of not over 3½, will provide the maturity amount.

U.D.S. certificates outstanding at the time the 1940 Act became effective consisted of obligations issued over a long period of time during which investment yields were substantially higher. The Company could not legally alter the terms of such contracts to meet the various requirements of the new Act including the requirements as to maximum reserve rates, and accordingly this Act carried a specific exemption for certificates issued prior to its effective date, subject, however, to the previously mentioned restriction on dividends.

The policy of the Company has been to strengthen its certificate reserves from time to time from earnings derived from all its activities, including distribution and investment management fees as well as invested assets. Simultaneously with this strengthening of reserves, the termination of older certificates, by maturity and otherwise, has resulted in a gradual decline in the reserve difference indicated below.

At the end of each year since 1949, your Board has appropriated from earned surplus such amounts as were feasible without unduly handicapping the Company's operations, with a view to building up such special appropriations to a sum eliminating this difference. At March 31, 1952, an additional special appropriation was made by the Board which finally accomplished this result indicated by the following condensed tabulation:

	Dec. 31, 1950	Dec. 31, 1951	Mar. 31, 1952
Approximate additional reserve necessary to be equivalent to those required of issuing companies under the 1940 Act	$12,400,000	$9,500,000	$9,000,000
Earned surplus appropriated for additional certificate reserves & contingencies	3,000,000	6,000,000	9,000,000
Remaining difference	$ 9,400,000	$3,500,000	Nil
Capital & Unappropriated Surplus	$ 3,349,469	$4,475,217	$2,785,785

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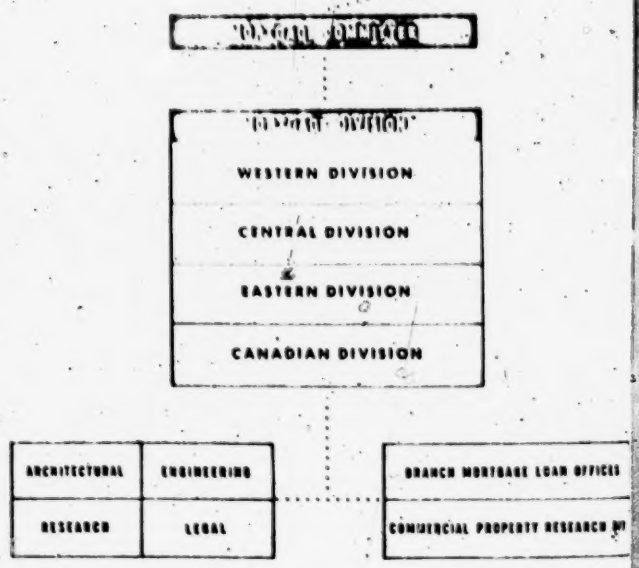
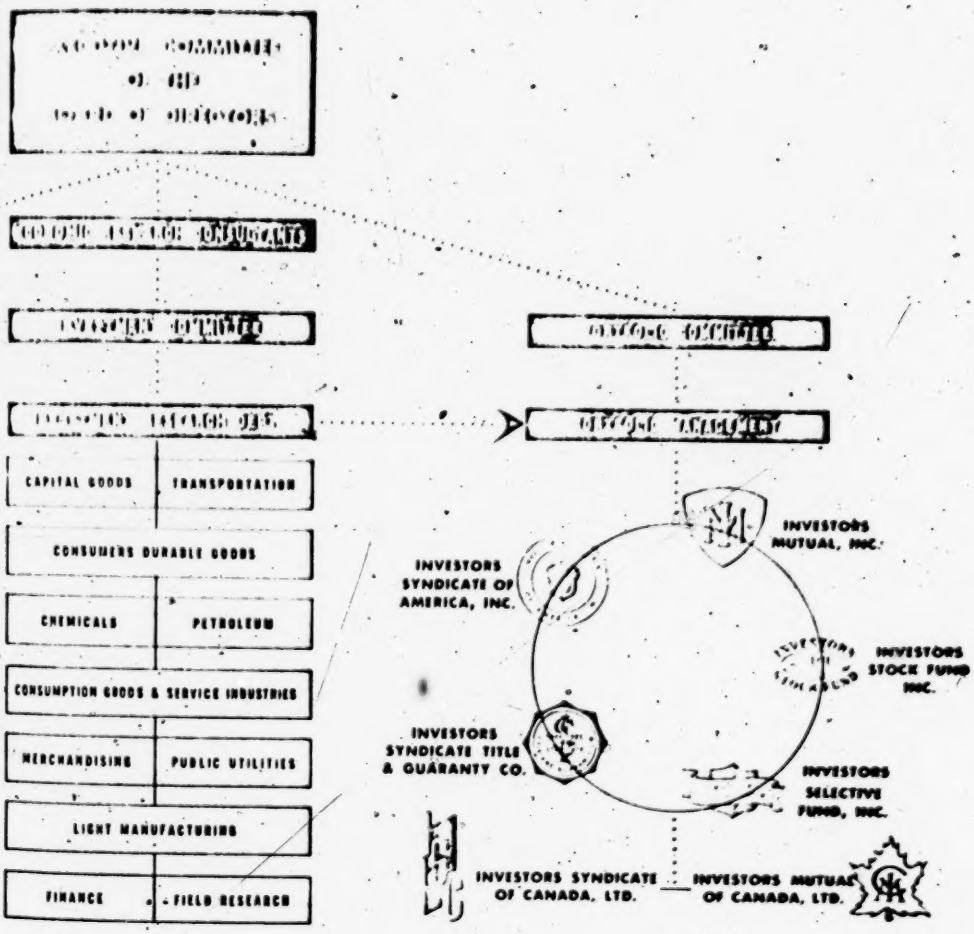
[fol. 2942]

How I.D.S. Approaches the Problem of Investment Management.

Few organizations have the resources required to maintain and to use as many safeguards as Investors Diversified Services, Inc. employs to protect investments in both mortgages and corporate securities. This chart illustrates the approach to investment management of our assets and those of our affiliated and subsidiary companies.




CAPITAL GOODS
TRANSPORTATION
CONSUMERS DURABLE GOODS
CHEMICALS
PETROLEUM
CONSUMPTION GOODS & SERVICE INDUSTRIES
MERCHANDISING
PUBLIC UTILITIES
LIGHT MANUFACTURING
FINANCE
FIELD RESEARCH
INVESTORS MUTUAL, INC.
INVESTORS SYNDICATE OF AMERICA, INC.
INVESTORS STOCK FUND INC.
INVESTORS SYNDICATE TITLE & GUARANTY CO.
INVESTORS SELECTIVE FUND, INC.
INVESTORS SYNDICATE OF CANADA, LTD.
INVESTORS MUTUAL OF CANADA, LTD.

Decline in Face Amount Certificates in Force

The progressive decline in the amount of in force certificates, due to the discontinuance of new issues at the end of 1940, has resulted, of course, in a decline in the assets maintained as collateral security for them. It is interesting to observe, however, that payments and accumulations on continuing certificates were in excess of disbursements on terminating certificates until 1950 sufficiently so that until the end of that year the total assets of the Company continued to increase. For the past two years maturities have been heavy, and will continue so for the next four years, consequently there will be a progressive decline in maintained assets.

The extent to which certificates have been terminated, together with estimates of future retirements for the next five years, is shown in the following table:

ANALYSIS OF INSTALLMENT CERTIFICATES

(Face Amount (000 Omitted))

	Series "$50,000 $100,000 and "A"	"B" and "C"	"D"	"E"	"G"	*Total All Installment Certificates*
Yield to Holder (1)	5%	5%	4 1/2%	4%	3%	
Outstanding 12-31-40	$88,278	$140,400	$81,944	$443,491	$224,408	$980,521
Net Retirements for the 11 years 1941-1951	83,696	113,940	66,188	243,304	126,407	633,535
Outstanding 12-31-51	4,582	26,460	15,756	200,187	98,001	344,986
Estimated Net Retirement 1952 to 1956 Inclusive	3,219	20,136	12,511	109,752	55,068	201,046
Estimated Outstanding 12-31-56	1,363	6,004	3,215	90,435	12,933	143,950

(1) On annual payment basis

It will be observed that the older high cost certificates, Series "D" and prior, now represent less than one sixth of the remaining certificates in force. They no longer are a materially important problem.

Investment Income

The decline in the Company's assets, previously explained, was largely responsible for the decrease in income derived from interest and dividends earned, the total dropping from $12,627,111 in 1930 to $71,608,376 in 1951. Part of this decline in investment income was due to a slight decrease in average rates earned on invested assets. Your Board has considered it prudent, under the Company's present commitments, to carry a somewhat higher ratio of short term governments and commercial paper than would normally be considered necessary.

A partially offsetting factor to lower investment income was the rise in interest rates in the securities markets that followed the Federal Reserve Board's withdrawal of support for government securities. This brought about an improvement in rates obtainable from investments purchased during the year, not only in government securities but also from investments in corporate obligations and preferred stocks.

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SOURCES AND DISPOSITION OF FUNDS *Year Ended December 31, 1951*

Sources	(Thousands of Dollars)		Investments
Mortgage Payments Received	$ 36,712	$ 40,329	Securities Purchased
Certificate Payments Received	13,497	2,919	Certificate Loans (net)
Interest & Dividends on Securities	1,601		
Underwriting & Management Fees	15,179	6,643	Paid Certificate Holders on Surrenders
Securities Sold	37,563	35,141	Paid Certificate Holders on Maturities
Miscellaneous (net)	4,297		
Mortgages Sold	102,922	18,470	Expenses & Commissions
Decrease in Cash Balance	5,773	166,441	Disbursements on New Mortgage Loans
	$209,544	$269,943	

The present tax laws are of such concern that the Company has had to study sources of investment for holding the tax burden to as reasonable a figure as it properly could. Preferred stocks give the corporate holder substantial tax relief on dividend income and consequently your Company has increased its holdings in such stocks. The following table indicates the distribution of the Company's investment income by type of security.

	Interest and Dividend Income		Yield	
	1951	1950	1951	1950
U. S. Govts & Short Term Paper	$ 230,276	$ 128,307	2.02%	2.56%
Corporate Bonds	629,123	833,858	4.04%	3.99%
Preferred Stocks	898,103	837,103	4.40%	4.33%
Common Stocks	27,700	19,050	9.25%	6.39%
Mortgages	9,113,265	10,135,165	4.55%	4.73%
Certificate Loans	662,871	610,066	5.06%	5.14%
Notes Receivable & Other	50,238	65,532	4.82%	4.84%
Total	$11,606,376	$12,627,111		
Average Yield			4.43%	4.83%

Non-Investment Income

Income from Mortgage Operations – There are various ways in which this division of the Company's activities contributes revenue, among which are the following:

–creation of mortgages for our own portfolio and those of subsidiaries;
–sale of mortgages in excess of our requirements to other institutions;
–servicing loans for others at a fee;
–participation in construction projects, notably housing, and part ownership of improved properties. The latter include several community business centers which are an increasingly important aspect of American life.

These activities are carried on through the home offices and seventeen other locations in various parts of the United States. Further, because of the growing magnitude

of many of the individual undertakings, a few of which are illustrated in these pages, a substantial architectural and engineering staff has been gradually built up. Many of these technicians work in the branch offices; in addition, nationally-known firms and individuals are retained as consultants in connection with the more important projects. This, plus the enterprising nature of our real estate activities and those directing it, has enabled INVESTORS to profit from the trend toward suburban community planning, with special reference to the business and shopping centers that are the necessary corollary of the city-to-suburbs trend of the times.

Low interest rates of F.H.A. and V.A. mortgages, together with building restrictions due to rearmament needs, caused a heavy cut in the developments in which INVESTORS participated last year. The comparative figures were:

	1951	*1950*
Income from Mortgage Operations before Home Office and General Expense	$3,218,342	$7,661,990

Income from Underwriting Fees – The underwriting business of INVESTORS consists of the distribution, through its own salesmen, of face amount certificates issued by INVESTORS Syndicate of America, and shares of its three mutual fund affiliates. No other securities are distributed, and no one else sells these securities.

In this activity, INVESTORS enjoyed its greatest year in 1951. I believe that a growing understanding of the basic nature of mutual funds played a large part in this growth, as did the investment record of our funds and the way in which they are sold. Earnings from underwriting fees were:

Income from Underwriting after commissions paid, but before other Operating and General Expenses:

	1951	*1950*
INVESTORS Syndicate of America, Inc.	$2,001,472	$1,791,963
Mutual Investment Companies	2,645,367	1,761,700
TOTAL	$4,646,839	$3,553,663

Investment Management – The major functions of the Investment Division are the initiation of investment policy in regard to all securities other than real estate mortgages, and its implementation by means of specific buying and selling recommendations regarding such securities. Its activities thus largely determine the holdings of the three mutual fund affiliates, as well as the securities portfolio of INVESTORS' subsidiaries and the parent company.

The facilities of this Division have been steadily expanded, and at the present time, are more complete than at any time in the Company's history. In addition to its permanent staff of analysts in the home office and in New York, the opinions and conclusions of a nationally known group of specialists in various fields are available as an aid to reaching general economic conclusions. Numerous "outside" reports relating to comparative security analysis are also utilized in rounding out comprehensive investment management service.

For these services, I.D.S. received gross fees as shown below. It should be borne in mind that these fees necessarily fluctuate from year to year, depending on two variables—(1) market price of securities held in portfolio; (2) net sales above redemptions of the funds.

	1951	1950
Face Amount Certificate Companies	$ 220,633	$ 174,615
Mutual Investment Companies	1,628,564	1,138,389
Income from investment management fees before Operating and General Expenses	$1,849,197	$1,313,004

In addition to the functions mentioned above, the Investment Department acts as negotiator for direct acquisition of securities from corporations. These "private placements" constitute a small but increasingly important part of our total business, and frequently enable us to make an advantageous purchase for one of our subsidiaries or affiliates.

Subsidiary Income

The table below presents a breakdown of income earned by subsidiaries during the year. The maintenance of capital and surplus commensurate with their growth make it improbable that income from the major subsidiaries will be available for dividends in the near future. The minor subsidiaries referred to are, in effect, branch offices of our real estate division, and as such their income is available to the parent company as dividends when such action is deemed advisable.

	1951	1950
Investors Syndicate of America, Inc.	$ 954,036	$ 424,540
Investors Syndicate of Canada, Ltd.	340,358	383,497
Investors Syndicate Title & Guaranty Co.	57,966	29,624
Minor Subsidiaries	203,857	250,005
Total	$1,556,217	$1,087,666
Less:		
Dividends received from minor subsidiaries included in income	$ 240,000	$ 170,000
Reserve for unrealized inter-company profits	224,000	500,000
Total	$ 464,000	$ 670,000
Balance (increase in undistributed earnings)	$1,092,217	$ 417,666

Outlook and Conclusion

With the international situation, and its consequent influence on the economy of the country, changing from day to day, it is impossible to foresee the operating results of any company, including yours. Nevertheless, our progress so far into the new year has been satisfactory.

Current evidence indicates that the people as a whole are spending less on non-essentials, and this trend is not wholly accounted for by higher prices and taxes. This means that there has been an increase in the habit of thrift. Since our business is founded on this very characteristic, our services are in increasing demand.

I wish, on behalf of the Board, to most sincerely thank our certificate holders and stockholders for their confidence in us. At the same time, I want to state my appreciation to our representatives and employes for their enterprise and industry in maintaining the efficiency of Investors' services to our customers.

E. E. Crabb

CHAIRMAN OF THE BOARD
AND PRESIDENT

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Balance Sheet, DECEMBER 31, 1951,

ASSETS (Notes 2 and 3)

	Market Value		December 31	
	1951	1950	1951	1950
QUALIFIED ASSETS (Note 4):				
CASH:				
On hand and in banks (Note 5)			$ 6,487,454	$ 5,520,200
Deposited with central depositary, states, and provinces			888,606	7,578,375
			$ 7,376,060	$ 13,098,575
SECURITIES (Notes 6 and 7):				
Bonds and notes—at amortized cost:				
United States Government—direct obligations	$ 6,690,623	$ 2,837,179	$ 6,802,327	$ 2,828,824
Other bonds and notes	22,011,013	16,339,343	22,297,986	16,407,191
Preferred stocks—at average cost, less allowance in 1950 for issue in arrears	18,156,254	16,652,226	20,270,487	18,314,754
	$46,857,890	$35,828,748	$ 49,370,800	$ 37,550,769
MORTGAGES ON REAL ESTATE—Principal balances, less allowances (Notes 6 and 8):				
First Mortgages:				
Insured or committed for insurance by Federal Housing Administration			$ 56,318,069	$ 59,534,365
Partially guaranteed by Veterans Administration			35,957,127	52,265,983
Other first mortgages and first liens on real estate			91,502,970	92,037,459
Second Mortgages—fully guaranteed by Veterans Administration			6,185,776	9,255,516
			$189,963,942	$213,093,323
OTHER QUALIFIED ASSETS:				
Loans to Certificate Holders—secured by applicable certificate reserves (Note 6)—includes $789,403 in 1951 and $667,280 in 1950 on certificates issued by a subsidiary			$ 13,059,450	$ 12,604,908
Real Estate—at depreciated cost:				
Acquired through foreclosure of mortgages			32,262	323,444
Other real estate			232,818	—
Interest and Dividends Receivable on Qualified Investments			1,081,805	1,223,265
Due from Brokers			21,218	341,987
			$ 14,427,553	$ 14,493,604
Total qualified assets			$261,138,355	$278,236,271
OTHER ASSETS:				
Investments in and receivables from subsidiary companies:				
Investments in common stock—at book value of underlying net assets, less allowance (Note 9)			$ 6,906,874	$ 5,733,058
Receivables			1,284,425	1,941,964
Other investments in securities—at cost (market value 1951—$671,038, 1950—$689,350)			600,615	614,555
First mortgages on real estate—principal balances			1,674,449	1,242,822
Unimproved real estate—at cost			49,984	106,920
Other receivables—less allowances			1,509,487	1,211,228
Equipment and leasehold improvements—at cost less depreciation and amortization			845,935	801,339
Other			304,314	239,007
Total other assets			$ 13,176,083	$ 11,890,889
			$274,314,438	$290,127,160

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with Comparative Figures for the Previous Year

LIABILITIES (Note 2)

	December 31	
	1951	1950
Certificate Reserves (Notes 1 and 4):		
Installment certificates:		
Reserves to mature:		
Cash surrender values attained at dates of last completed certificate years	$216,062,685	$231,127,303
Reserve payments applicable to current certificate years	13,411,159	15,258,733
Reserves to stabilize financing costs	9,706,012	10,823,227
Other	1,758,601	1,752,095
Advance payments and accrued interest	8,772,554	11,003,928
Fully paid certificates—reserves to mature	9,816,464	8,425,965
Due to unlocated certificate holders	101,586	105,199
	$259,629,081	$278,496,450
Current Liabilities, Exclusive of Certificate Liabilities:		
Accounts payable:		
Commissions due to sales representatives	$ 416,723	$ 292,495
Subsidiary companies	67,175	74,612
Sundry creditors	897,099	526,777
Unearned interest on loans	165,328	189,512
Undistributed collections from mortgagors and certificate holders	146,346	72,973
Accrued taxes:		
Income (Note 10)	1,273,835	2,886,788
Other	24,794	64,389
Accrued sales representatives' incentive pay bonus	619,513	400,919
Other	34,341	29,659
	$ 3,645,154	$ 4,538,124
Note Payable to Affiliated Company—subordinated	$ 137,260	$ 137,260
Deferred Credit—mortgage construction loan fees (Note 11)	$ 427,748	$ 605,857
Capital Stock and Surplus:		
Capital stock:		
Common Class "A" (not preferred and non-voting)—$5 par—authorized, 260,000 shares; issued and outstanding, 175,836.37 shares	$ 879,182	$ 879,182
Common — $5 par — authorized, 140,000 shares; issued and outstanding, 114,908.16 shares	574,541	574,541
Earned surplus, per accompanying statement (Notes 9, 12 and 13):		
Appropriated for additional certificate reserves and contingencies	6,000,000	3,000,000
Unappropriated	3,021,494	1,895,746
	$ 10,475,217	$ 6,349,469
	$274,314,438	$290,127,160

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See accompanying notes to financial statements.

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Statement of Net Income

FOR THE YEAR ENDED DECEMBER 31, 1931 with Comparative Figures for the Previous Year

	Year Ended December 31	
	1931	1930
Gross Income:		
Investment and certificate servicing income:		
Interest on bonds, mortgages, and other loans	$10,694,373	$11,770,958
Cash dividends on stocks	913,803	856,153
Installment certificate loading and servicing income (Note 14)	488,822	495,413
	$12,097,198	$13,122,524
Mortgage operations:		
Construction loan fee income	$ 2,311,648	$ 6,946,270
Service fees (includes $756,686 in 1931 and $659,339 in 1930 from subsidiaries)	1,550,609	1,127,090
Cash dividends from subsidiary mortgage companies	240,000	170,000
Premiums on mortgages sold (includes $416,613 in 1931 and $820,598 in 1930 from subsidiaries)	494,732	1,127,217
Other mortgage income (Note 13)	364,090	463,760
	$ 4,961,169	$ 9,834,337
Underwriting fees from subsidiary and affiliated companies	$12,870,793	$ 9,565,578
Management fees from subsidiary and affiliated companies	$ 1,849,197	$ 1,313,004
Other income (includes $156,027 in 1931 and $132,296 in 1930 collection fees from a subsidiary)	$ 282,440	$ 243,738
Total gross income	$31,760,797	$34,079,181
Costs and Expenses:		
Provision for certificate reserves, less recoveries of $289,769 in 1931 and $327,346 in 1930 from lapses and surrenders (Note 1)	$11,538,127	$12,417,208
Mortgage branch office and agency expenses, including salaries of $968,127 in 1931 and $949,522 in 1930, and after charges to a subsidiary of $131,546 in 1931 and $141,180 in 1930	1,742,827	2,172,347
Collection and sales agency expenses	935,074	741,213
Commissions and incentive pay bonuses to sales representatives	8,660,953	6,412,089
Other expenses, including salaries of $3,031,745 in 1931 and $2,558,094 in 1930, and after charges to subsidiaries of $785,386 in 1931 and $576,859 in 1930	4,601,772	3,735,880
Total costs and expenses	$27,478,753	$25,478,737
Operating Income	$ 4,282,044	$ 8,600,444
Income Credits, including $27,019 in 1931 and $75,559 in 1930 from reduction in provision for exchange discount	66,282	133,788
Gain (Loss) on Investment Transactions	56,818	(105,487)
Income Before Provision for Income Taxes	$ 4,405,144	$ 8,628,745
Provision for Income Taxes:		
Federal normal and surtaxes (Note 10)	$ 1,220,000	$ 2,815,000
State	15,000	40,000
	$ 1,235,000	$ 2,855,000
Add (deduct) net amount applicable to deferred construction loan fees (Note 10)	136,613	(263,000)
	$ 1,371,613	$ 2,592,000
Net Income for the Year	$ 3,033,531	$ 6,036,745

See accompanying notes to financial statements.

[fol. 2950]

Statement of Earned Surplus

FOR THE YEAR ENDED DECEMBER 31, 1951 with Comparative Figures for the Previous Year

	Year Ended December 31	
	1951	1950
UNAPPROPRIATED		
Balance at Beginning of the Year	$ 1,895,748	$ Nil
Net Income for the Year per accompanying statement	3,033,531	6,098,745
Proportionate Share of Earnings of Subsidiary Companies for the Year, less dividends of $210,000 in 1951 and $170,000 in 1950 included in income, and less allowance of $224,000 in 1951 and $500,000 in 1950 for unrealized inter-company profit on mortgage transactions	1,092,217	417,666
	$ 6,021,494	$ 6,454,411
Deductions		
Appropriation for additional installment certificate reserves to provide for accrual of increments as of January 1, 1950	—	$ 3,001,649
Appropriated for additional certificate reserves and contingencies	$ 3,000,000	1,557,016
	$ 3,000,000	$ 4,558,665
Balance at End of the Year	$ 3,021,494	$ 1,895,748
APPROPRIATED FOR ADDITIONAL CERTIFICATE RESERVES AND CONTINGENCIES		
Balance at Beginning of the Year	$ 3,000,000	$ 1,442,984
Transferred from Unappropriated Surplus	3,000,000	1,557,016
Balance at End of the Year	$ 6,000,000	$ 3,000,000

See accompanying notes to financial statements.

PEAT, MARWICK, MITCHELL & Co.
CERTIFIED PUBLIC ACCOUNTANTS
NORTHWESTERN BANK BUILDING
MINNEAPOLIS 2, MINN.

To the Board of Directors and Security Holders
of Investors Diversified Services, Inc.:

We have examined the balance sheet of Investors Diversified Services, Inc. as of December 31, 1951 and the statements of net income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We secured direct confirmation of the securities owned at December 31, 1951 from the custodians as to those on deposit and in safekeeping, and from brokers with respect to uncompleted transactions.

Information with respect to the Company's reserves on installment certificates as set forth in Note 1 (B) to the financial statements is based upon reports of an independent firm of actuaries and was not verified by us.

In our opinion, the accompanying balance sheet and the statements of net income and earned surplus present fairly the financial position of Investors Diversified Services, Inc. at December 31, 1951 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

PEAT, MARWICK, MITCHELL & Co.

Minneapolis, Minnesota
March 31, 1952

[fol. 2951a]

Notes to Financial Statements DECEMBER 31, 1951

1. Certificate Obligations and Reserves Thereon

(A) The Company has outstanding eight series of installment certificates which were issued prior to 1941. The certificates provide for stipulated payments by the holder for periods ranging from ten to fifteen certificate years. The Company agrees to pay the face amount of the certificate at maturity or the specified cash surrender values designated in the certificates prior thereto. If a payment is not made when due the maturity date is extended by the period of delay and the certificate does not increase in value during such periods. Payments made in advance of due dates are interest bearing in accordance with the terms thereof. The rate of return to the holders varies according to series and is also affected by delays in making payments and terminations prior to maturity. The Company also has outstanding certain interest bearing obligations designated as fully paid certificates, which for the most part represent contractual conversions from installment certificates.

The Company is not subject to the reserve standards of the Investment Company Act of 1940, including the limitation of the maximum reserve rate to 3½%, which if used would require larger reserves. The Company's reserves are based upon rates which differ by series of certificates and also to a minor extent from year to year within each series. Reserves are maintained for fully paid certificates and advance payments at the stipulated rates. The rates of net cost to average monthly comparable reserve balances were as follows:

	1951	1950
Increments on installment certificates	4.34%	4.46%
Interest on advance payments	2.61	2.53
Interest on fully paid certificates	4.00	3.99
Combined	4.27%	4.37%

At December 31, 1951 there were outstanding installment certificates with a maturity value of $344,985,862. Approximately $255,738,000 maturity value of these certificates had five or less certificate years remaining to their maturity. Of this amount, certificates with a maturity value of $220,952,750 have a non-callable option to continue payments for a period of 10 years with a decrease in the rate of cost of approximately ⅛ of 1%.

(B) The Company engaged an independent firm of actuaries, Joseph Froggatt & Co., Inc. of New York City, to make an analysis of the Company's installment certificates outstanding as to duration, and experience as to lapses, stretchouts and surrenders thereon. They also made a study of the Company's earnings during the years 1940 through 1943, inclusive, which showed that the average net earnings (exclusive of net earnings or losses from loading and from distribution of securities for affiliated companies, net earnings of wholly-owned subsidiaries, and profits and losses from sale of portfolio securities) was 4.535% on the Company's total assets. A comparison between the reserves computed by the actuaries on this 4.535% basis, the reserves actually maintained by the Company, and the approximate reserves that would have been provided on the basis of a theoretical rate of improvement of 3½% (after allowances for unrealized cost reductions from delinquent payments and surrenders) is as follows:

December 31:	Face Amount of Installment Certificates Outstanding	Reserves per Actuaries Computation *	Applicable Installment Reserves Maintained by Company	Approximate Reserves Computed on Theoretical 3½% Basis
	(000 Omitted)			
		(Before Exchange Discount on Canadian Amounts)		
1943	$648,149	$168,277	$160,477	$190,302
1944	593,584	183,529	176,358	203,973
1945	557,231	202,372	196,157	221,854
1946	530,202	222,883	217,163	241,050
1947	505,754	243,866	238,442	260,414
1948	476,114	258,676	254,054	273,204
1949	440,596	265,509	262,604	277,817
1950	394,605	258,130	258,649	268,122
1951	344,986	238,538	239,398	246,698

*Based on 4.535 rate.

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Notes to Financial Statements, December 31, 1951 Continued

The Company has developed sources of income other than its pure investment income from which it expects to receive additional net earnings. Such other sources of income include that realized from mortgage operations and management and underwriting fees received from affiliated companies.

The obligations for cash surrender values are specifically provided for in the exact terms of the certificates, and at December 31, 1951 were considerably less than the amount of certificate reserves maintained by the Company.

2. Canadian Assets and Liabilities

The book value of net assets employed in Canada at December 31, 1951 aggregated $882,484 (assets of $22,411,561 less liabilities of $21,529,080), before provision of $11,027 for exchange at the buying rate in effect on December 31, 1951, applicable to all Canadian items except those payable in United States funds. Canadian operations are reflected in the income statement on a dollar for dollar basis, except that adjustments of the unrealized loss on exchange conversion are made by charge or credit thereto.

3. Deposits of Assets

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 59, Minnesota Statutes, 1945, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of December 31, 1951, the following assets were so deposited:

	Deposits			
	At Book Value	*At Value Prescribed Under Agreements*	*Required Deposits*	*Excess*
Deposits to meet certificate liability requirements:				
States and Provinces	$127,562,373	$127,571,805	$124,598,001	$ 2,973,804
Central Depositary	117,480,620	116,787,274	103,459,421	13,327,853
Total	$245,042,993	$244,359,079	$228,057,422	$16,301,657
Deposits with States and Provinces to meet licensing requirements	225,000	225,000	225,000	—
Total	$245,267,993	$244,584,079	$228,282,422	$16,301,657

The deposits consisted of cash, $888,606, securities at book value of $69,921,578, mortgages with unpaid balances of $180,951,930, loans secured by certificates issued by a subsidiary of $738,845, and investments in subsidiaries at book value of $6,749,946.

The above deposits included assets with an aggregate book value of $7,911,187 which were qualified under the terms of the deposit agreements but not under the conditions of certificates. The difference of $683,914 between the book values of assets deposited and the values of such assets on bases prescribed under the conditions of deposit agreements, consists principally of the excess of the book value of investments in common stocks of subsidiaries, which for purposes of valuation under the central deposit agreement are included at 80% of the Company's equity in net assets of the companies.

4. Requirements as to Qualified Assets

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to asset ratio maintenance provisions.

In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At December 31, 1951, the Company was required to maintain qualified assets in the amount of

Notes to Financial Statements, December 31, 1951—Continued

$233,723,988 (exclusive of loans on its certificates), and as indicated in the accompanying balance sheet, the Company had qualified assets at that date in excess of such amount. The nature of the qualified assets and the amount thereof are not subject to the provisions of Section 28 of the Investment Company Act of 1940.

5. Cash

At December 31, 1951, the Company held funds collected from mortgagors for future payments of taxes and insurance, and agency collections for others in the aggregate amount of $4,223,781. Drafts issued by the Company which had not been presented for payment at that date aggregated $2,007,372. These amounts, aggregating $6,231,153, have been deducted from the cash balances and from the contra liability accounts.

6. Gross Rates of Return on Investments

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on securities, mortgages, and certificate loans for the years 1951 and 1950, based upon the monthly average book values of the investments, were as follows:

	1951	1950
Securities	3.74%	3.99%
Mortgages	4.55	4.78
Certificate Loans	5.08	5.14
Combined	4.43%	4.69%

7. Securities

The market values of listed and active securities are based upon closing published market quotations. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that in the absence of available quotations, twenty-seven issues were valued at $12,851,351, which in the opinion of the Board of Directors was fair market value. A list of securities held at December 31, 1951 is included as part of this report.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1951 were fully income producing and none were in default. The carrying values of securities at December 31, 1951 exceeded the market values thereof in the amount of $2,442,487, an increase in unrealized depreciation of $795,282 from December 31, 1950. Premiums and discounts on bonds and notes are amortized on a yield basis to maturity.

8. Mortgages and Mortgage Commitments

Mortgages are carried at principal balances less unamortized discounts and allowances of $88,458 at December 31, 1951. Commitments in respect of mortgages at December 31, 1951 aggregated approximately $61,000,000, including $33,364,112 on which partial disbursements had been made.

The aggregate principal balances of mortgages of the self-amortizing type held at December 31, 1951 were $158,315,708.

The principal balances of mortgages in respect of which principal or interest payments were past due for more than three months at December 31, 1951 were $2,811,184. Of this amount $1,208,252 represented mortgages insured by the Federal Housing Administration or partially or fully guaranteed by the Veterans Administration.

9. Investments in Subsidiaries

Investments in subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets, less an allowance of $724,000 at December 31, 1951 for unrealized intercompany profit on mortgage transactions. The book value of securities held by subsidiaries at December 31, 1951 was $394,431 in excess of market values, a decrease in unrealized depreciation of $177,536 from December 31, 1950.

As in previous years, no provision has been made in the financial statements for income taxes which would accrue if undistributed profits of subsidiaries were paid as dividends to the Company. Consolidated Federal income tax returns have been filed by the Company and its domestic subsidiaries for all years subsequent to 1941 and no tax is payable on the dividends received from these subsidiaries in years in which such returns are filed. Also, a credit is allowed against the tax payable on dividends received from Canadian subsidiaries for Canadian income taxes paid.

Credits to earned surplus for undistributed earnings of subsidiary companies aggregated $5,257,187 at December 31, 1951. The earned surplus of Investors Syndicate of America, Inc., one of the Company's subsidiaries, is restricted as to dividend payments during 1952 by reason of declaration of additional credits for that year

Notes to Financial Statements, December 31, 1951—Continued

at a rate lower than the minimum which could be declared without such restriction. The granting of additional credits during the year ended December 31, 1951 at a rate necessary to remove this restriction would have increased expenses of that company by approximately $290,500. Credits to earned surplus for undistributed earnings of that subsidiary aggregated $3,002,983 at December 31, 1951.

10. Income Taxes

By reason of the provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries and the Company will file its return for 1951 on that basis. On a separate return basis the federal income tax provision for the year 1951 would have been approximately the same as on a consolidated basis. No excess profits tax was payable for 1951 on either basis. The Bureau of Internal Revenue has not completed examination of federal income tax returns for years subsequent to 1948, and taxes for those years have not been finally determined. Income taxes applicable to deferred construction loan fees (see Note 11) aggregated $278,387 at December 31, 1951 and $415,000 at December 31, 1950, resulting in a net decrease in the amount of the provision allocated to deferred income for the year 1951 of $136,613.

11. Deferred Construction Loan Fees

Fees on construction loans are subject to income taxes in the period received whereas on the book basis they are taken into income as earned. Income taxes applicable to such fees received but deferred on the books are allocated to deferred construction loan fees, and are charged to operations in the period in which the fees are taken into income. Fees deferred at December 31, 1951 are shown net after $278,387 of income taxes applicable thereto.

12. Dividend Restrictions

Undistributed earnings of subsidiaries included in surplus aggregating $5,257,187 at December 31, 1951 are not available for dividends until paid to the Company.

According to the terms of the Series "G" certificates, no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series "G" certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series "G" certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Payment of additional credits on Series "G" certificates at the rate necessary to remove the dividend restriction at 1951 would have increased expenses by approximately $270,000 in that year.

Under sub-section (h) of Section 28 of the Federal Investment Company Act of 1940, the Company may be restricted from paying dividends to its stockholders.

13. Contingent Mortgage Repurchase Agreement

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 96.8% owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on December 31, 1951, were subject to such repurchase agreements aggregated $18,379,093 including $13,405,299 of FHA insured mortgages.

14. Service Fees and Loading Credits on Installment Certificates

Service fees and loading credits on installment certificates are taken into income as received. The service fees represent charges made to certificate holders on installment payments made on less than an annual basis to cover the additional costs involved in making the collections, additional record keeping, and the loss of the use of the funds. The loading credits, for the most part, represent amounts deducted from installment payments to cover annual costs incident to servicing the certificates.

15. Anti-Trust Suit

The Company and four of its subsidiaries are defendants in a suit brought by the Federal government on April 26, 1951 under Acts commonly known as the Clayton and Sherman anti-trust laws in connection with the placing of hazard insurance on mortgaged properties. This action, among other things, seeks to enjoin the companies from receiving any compensation from the writing, placing, or selling of hazard insurance. Gross insurance commissions received by the Company and its subsidiaries aggregated $339,155 in 1951.

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Investments in Securities DECEMBER 31, 1951

Summary of Investments in Securities

Description	Market Value*
BONDS AND NOTES:	
Domestic:	
U. S. Government—direct obligations	$ 6,690,623
U. S. Government—chartered institutions	5,796,824
Financial institutions	5,095,545
Industrial	5,723,520
Public utility	287,944
Transportation	256,778
Canadian:	
Dominion Government and Dominion Government guaranteed	1,291,778
Provincial	118,125
Municipal	641,500
Financial institutions	1,454,750
Industrial	1,102,081
Public utility	234,375
Transportation	236,100
Total bonds and notes	$28,929,943
PREFERRED STOCKS:	
Domestic:	
Financial institutions	$ 393,800
Industrial	11,106,702
Public utility	3,736,830
Transportation	2,952,423
Total preferred stocks	$18,191,755
COMMON STOCKS—Domestic	$ 407,230
Total investments in securities	$47,528,928
CLASSIFICATION IN ACCOMPANYING BALANCE SHEET:	
Under qualified assets	$46,857,890
Under other assets	671,038
Total, as above	$47,528,928

Supplementary Information

YEAR ENDED DECEMBER 31, 1951

Purchases and Sales of Securities

During the year ended December 31, 1951, purchases of securities, other than United States Government bonds, aggregated $18,228,039. The aggregate cost of securities sold, other than United States Government bonds, was $10,916,027.

Compensation Paid to Officers and Directors

During the year ended December 31, 1951, three of the Company's directors were also executive officers and they received no additional compensation for acting as directors. Regular directors' fees paid to the other directors during the year ended December 31, 1951, were $9,639. Special compensation of $450 was paid to a director for investment advisory services.

Compensation to executive officers (excluding assistants to vice presidents, to secretary and to treasurer) aggregated $329,742 for the periods during which they held office during the year ended December 31, 1951.

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Board of Directors

GRADY CLARK	*Investors Diversified Services, Inc., Minneapolis, Minnesota*
EARL E. CRABB	*Chairman, Minneapolis, Minnesota*
JOSEPH M. FITZSIMMONS	*Modern Woodmen of America, Rock Island, Ill.*
* EDMOND E. LINCOLN	*Consulting Economist, Wilmington, Delaware*
ROBERT W. PURCELL	*Chairman, Executive Committee, New York*
* H. DUDLEY SWIM	*Private Business Interests, Carmel, California*
GALEN VAN METER	*Vice Chairman, New York*

* *Elected April 22, 1952*

Principal Officers

EARL E. CRABB	*President*
ROBERT W. PURCELL	*Chairman, Executive Committee*
GALEN VAN METER	*Chairman, Investment Policy Committee*
HARRY C. THOMPSON	*Secretary and Treasurer*

VICE PRESIDENTS	HAROLD K. BRADFORD	*Corporate Affairs*
	HARVEY C. CARR	*State Regulations*
	GRADY CLARK	*General Sales Manager*
	C. DONALD MCGUIGGAN	*Mortgage Operations*
	CLYDE J. MOORE	*Pension Plans*
	JAMES R. RIDGWAY	*Mortgage Operations*
	DONALD E. RYAN	*Mortgage Operations*
	NORMAN B. WAAG	*Controller*

THOMAS L. KENEALY — *Auditor*

Executive offices: Roanoke Building, Minneapolis, Minnesota
Independent Public Accountants: Peat, Marwick, Mitchell & Co., Minneapolis, Minnesota
Stock transferable at the offices of the Company, Minneapolis, Minnesota

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-362

Investors Diversified Services, Inc.

59TH ANNUAL REPORT

for the Year Ended December 31, 1952

[fol. 2959]

Investors

DIVERSIFIED SERVICES, INC.

Annual Report • 1952

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Copies of this Report are being made available to banks, financial agencies and institutions, for their files for ready reference. This material, under no circumstances, is to be used in the solicitation of applications for investment certificates or shares in investment companies.

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[fol. 2959a]

Highlights of 1952

Gross assets under EDS management pass billion dollar mark, total $1,102,138,735

Sales of face amount certificates of subsidiaries in one year at new high, total face amount, $303,365,000 *

*(Of which $44,908,000 was in Canadian dollars)

Sale of shares of mutual funds distributed and managed by EDS and its Canadian subsidiary in one year at new high, total $126,437,000 *

*(Of which $9,031,000 was in Canadian dollars)

Mortgages serviced on December 31, 1952 numbered 75,886, representing a total value of $587,207,574

Total number of salesmen and employees of EDS and subsidiaries passed 3,500

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May 28, 1953

REPORT TO THE SHAREHOLDERS

IT IS A PLEASURE to report to you that the results of operations in 1952 showed considerable improvement as compared to 1951, and were second only to the all-time peak year of 1950.

Net income in 1952 was $3,833,030 compared to $3,033,531 in 1951. The Company's share of undistributed earnings of subsidiaries was $1,466,731 compared to $1,092,217 in 1951. All of the earnings were retained in the business. As explained in detail on page 8, $3,000,000 of earnings were appropriated for additional certificate reserves and contingencies, thereby bringing the amount so appropriated to a total of $9,000,000.

This total is now substantially more than would be required to make the certificate reserves of the Company equivalent to the minimum reserves required of issuing companies under The Investment Company Act of 1940.

Sources of Income

THERE ARE four principal sources of income to your Company, as follows:

1. Fees received from the distribution of certificates and shares.
2. Fees received for investment management.
3. Income from investments.
4. Income from mortgage operations.

In addition your Company has a number of wholly-owned subsidiaries from which earnings may be realized. These are described more fully on page 13.

Progress for 1952 of each of these phases of operations is discussed in the following pages.

Securities Distribution

THE COMPANY'S SALES FORCE, which currently numbers about 2,279 persons, achieved a new high total in volume last year; the value of both mutual fund shares and face amount certificates sold were at their highest points in history. The sales total for the companies whose securities are distributed by I.D.S. were as follows:

Face Amount Certificate Company	*1952*	*1951*
Certificates of Investors Syndicate of America, Inc.—face amount value	$241,445,710	$186,875,095
Mutual Funds		
Investors Mutual, Inc.	$ 99,339,635	$ 83,592,105
Investors Selective Fund, Inc.	3,493,104	4,137,494
Investors Stock Fund, Inc.	14,572,822	11,154,239
TOTAL MUTUAL FUNDS	$117,405,561	$ 98,883,838

Investment Management

YOUR COMPANY, by contract, supervises the portfolio securities of all of the companies listed below. During the year our staff of analysts was strengthened materially, and we now have a well trained and highly experienced group of industry specialists.

Gratifying evidence of the satisfactory performance of the securities management staff is given by the fact that 64% of the total dividends paid in 1952 by our affiliated mutual funds was used by shareholders to purchase additional shares of the individual funds.

Total security investments managed at respective year-ends were as follows:

Face Amount Certificate Company	*1952*	*1951*
Investors Syndicate of America, Inc.	$ 48,263,308	$ 36,441,711
Mutual Funds		
Investors Mutual, Inc.	430,247,458	313,793,039
Investors Selective Fund, Inc.	11,643,795	9,485,553
Investors Stock Fund, Inc.	46,174,480	30,831,257
TOTAL	$536,329,041	$390,551,560

[fol. 2962]

Investors Diversified Services is increasingly becoming a *management* company. Therefore, while the total amount of assets under management by I.D.S. continues to grow, the Company's assets progressively decline as the face amount certificates issued by it prior to 1941 mature or terminate.

Investment Income

Last year, assets of the Company declined from $274,314,438 at the close of 1951 to $261,230,193, due principally to the maturing of certificates. Naturally, gross return from these assets was lower than in the previous year, even though the rate of return increased slightly as shown in the following table:

	Interest & Dividend Income		*Gross Rate of Return*	
	1952	*1951*	*1952*	*1951*
U. S. Govts. & Commercial Paper	$ 354,760	$ 239,276	2.32%	2.02%
Corporate Bonds	816,722	629,123	4.81	4.04
Preferred Stocks	953,658	886,103	4.52	4.46
Common Stocks	38,932	27,700	7.14	9.29
Mortgages	8,370,286	9,113,265	4.62	4.55
Certificate Loans	626,888	662,671	5.04	5.08
Other	53,149	50,238	5.00	4.62
Total	$11,214,392	$11,608,376		
Average Yield			4.51%	4.43%

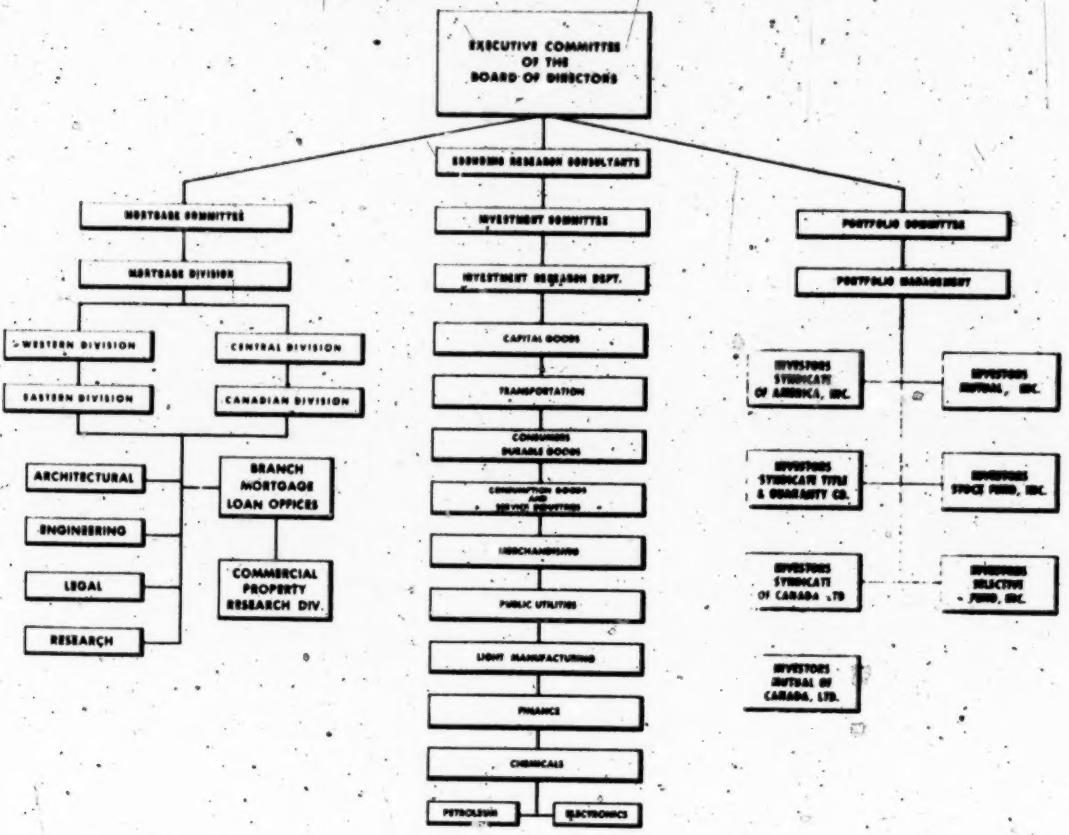
CERTIFICATE RESERVES AND ANALYSIS OF INSTALLMENT CERTIFICATES

The annual reports for 1950 and 1951 commented on the certificate reserves and showed an analysis of installment certificates. Since both of these subjects are of great importance they are described again in this report.

(Continued on page 8)

The Investment Organization of THE

Few organizations have the resources to maintain and to use facilities equal to those of Investors Diversified Services, Inc. This chart illustrates the approach to investment management of our assets and those of our affiliated and subsidiary companies.



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[fol. 2964]

"INVESTORS GROUP"

	Date Organized	Assets as of March 31, 1953
PARENT COMPANY		
INVESTORS DIVERSIFIED SERVICES, INC.	1894	$257,162,530
This, the parent company of the Investors group, is a Minnesota corporation operating under a charter granted in July, 1894. From that date to December 31, 1940, its principal business consisted of issuing and selling its own face amount certificates and of investing the proceeds from such certificates. Today its principal activities, in addition to the investment management of its own assets, including real estate financing, are: (1) the distribution of the certificates and shares of certain of its subsidiary and affiliated companies, respectively, and (2) to act as investment manager for them.		
SUBSIDIARIES		
INVESTORS SYNDICATE OF AMERICA, INC.	1940	$236,557,473
An issuing face amount certificate company with assets primarily in the real estate mortgage field. "I.S.A." has always played an important role in home ownership. Today, it is, in addition, financing an increasing number of large-scale housing projects and shopping centers, subject to government restrictions in the building field; a few of them are illustrated in the following pages.		
INVESTORS SYNDICATE TITLE & GUARANTY CO.	1928	$ 34,501,016
This New York State subsidiary of I.D.S. invests primarily in mortgages, both in and out of New York. The company distributes its own face amount certificates in that state.		
INVESTORS SYNDICATE OF CANADA, LTD.	1940	$ 61,581,764*
This I.D.S. subsidiary sells its own face amount certificates and distributes the shares of its mutual affiliate, identified below, for which it also acts, by contract, as investment manager. Its own investments largely consist of Canadian mortgages and other Canadian securities.		
AFFILIATES		
INVESTORS MUTUAL, INC.	1940	$459,230,220
INVESTORS SELECTIVE FUND, INC.	1945	$ 12,924,539
INVESTORS STOCK FUND, INC.	1945	$ 49,412,421
These are three open-end investment companies of the mutual type, commonly known as "mutual funds." Each of them is owned by its shareholders, and hence are I.D.S. affiliates rather than subsidiaries. Investors Diversified Services is, by contract, their investment manager and principal underwriter. While the portfolio of each of them is widely diversified and fully managed, each has a different investment objective. Investors Stock Fund holds a broadly diversified cross-section of common stocks, emphasizing the growth factor; Investors Selective Fund is virtually limited to debt obligations and preferred stocks, while Investors Mutual, largest of the three, is a "balanced" fund, holding both senior securities and common stocks in its portfolio.		
INVESTORS MUTUAL OF CANADA, LTD.	1950	$ 23,902,349*
This company is, in effect, the Canadian equivalent of the American Investors Mutual; it is an open-end investment company of the "balanced" type. Its investments are primarily, but not exclusively, in Canadian securities. Investors Syndicate of Canada is, by contract, its investment manager and the distributor of its shares, which are sold only in Canada.		*Canadian Dollars
Thus the total gross assets of the companies comprising the Investors group are		$1,135,272,312

Although the Company's certificates were all issued prior to the enactment of The Investment Company Act of 1940, and therefore are not subject to the reserve standards of that Act, your directors have felt that the Company should set aside earned surplus in an amount sufficient to place the reserves on the minimum standards of the 1940 Act. This has been accomplished over the past three years as indicated below.

A provision of the 1940 Act, in effect, requires that a face amount certificate company may not pay dividends until their minimum reserve requirements are met, as is mentioned in the footnotes to the financial statements. While not necessarily presaging such action in the immediate future, the appropriation of surplus is obviously a necessary step in advance of any distribution which may eventually be made by your directors.

	December 31, 1952	*December 31, 1951*	*December 31, 1950*
Approximate additional reserve necessary to be equivalent to that required of issuing companies under the 1940 Act	$7,500,000	$9,500,000	$12,400,000
Earned surplus appropriated for additional certificate reserves and contingencies	9,000,000	6,000,000	3,000,000
Remaining difference (excess)	($1,500,000)	$3,500,000	$ 9,400,000
Capital and unappropriated surplus	$6,774,978	$4,475,217	$ 3,349,469

The extent to which certificates have been terminated and estimates of future retirements for the next five years are shown in the following table:

[fol. 2966]

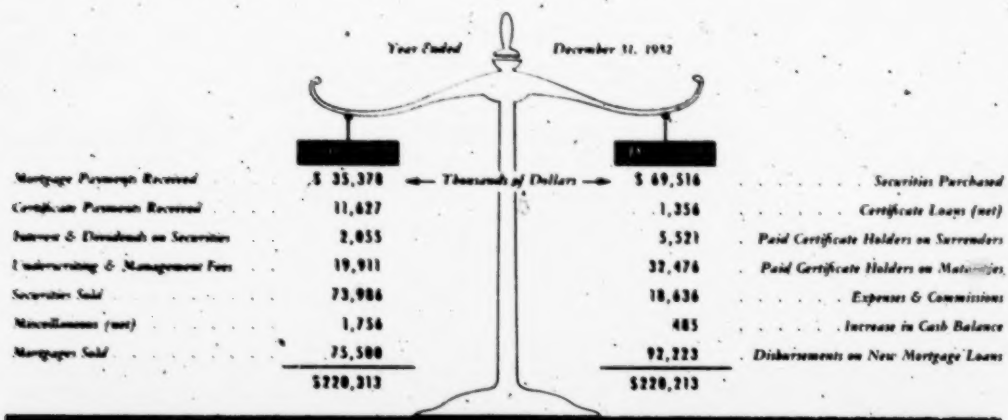
ANALYSIS OF INSTALLMENT CERTIFICATES

(Face Amount — 000 Omitted)

	Series "50,000" "200,000" and "A"	*"B" and "C"*	*"D"*	*"F"*	*"G"*	*Total All Installment Certificates*
Yield to Holder (1)	5½%	5%	4.4%	4%	3%	
Outstanding 12-31-40	$88,278	$140,400	$81,944	$445,491	$224,408	$980,521
Net Retirements for the 12 years 1941-1952	84,779	120,542	70,787	268,127	131,867	676,102
Outstanding 12-31-52	$ 3,499	$ 19,858	$11,157	$177,364	$ 92,541	$304,419
Estimated Net Retirement 1953 to 1957 Inclusive	2,389	15,646	8,853	85,943	62,185	175,016
Estimated Outstanding 12-31-57	$ 1,110	$ 4,212	$ 2,304	$ 91,421	$ 30,356	$129,403

(1) On annual payment basis

As this table indicates, the problem of high cost certificates has been practically eliminated. Rate of cost of certificate money again showed a decline to 4.17% in 1952 compared to 4.27% for the previous year.



SOURCES AND DISPOSITION OF FUNDS

Mortgage Operations

INCOME FROM MORTGAGE operations is derived from various sources, among which are the following:

—Creation of mortgages for our own portfolio and those of subsidiaries.

—Sale of mortgages to other institutions.

—Servicing mortgage loans for others on a fee basis.

—Participation in construction projects, principally housing and, to a lesser extent, shopping centers.

A substantial portion of the assets of our subsidiary, Investors Syndicate of America, and those of the parent company are employed in the real estate mortgage held. This Department is, therefore, an important contributor to the earnings of I.D.S. At the year end, the Mortgage Department was servicing 75,886 mortgages, including mortgages owned by I.D.S. with a total value of $587,207,574. In 1952 new mortgage loans made totaled about $92,000,000 compared to about $106,000,000 for 1951.

During the past three years, Investors Diversified Services has made a substantial contribution to reducing the housing shortage so prevalent just a few short years ago. Of added interest is the low rate of foreclosures which, in the year just ended, totaled $403,128—or less than two-tenths of one per cent of the total dollar value of real estate mortgages held by I.D.S. on December 31, 1952.

During 1952 a larger share of mortgage operations was transferred to the mortgage subsidiaries which function as branches. These branches are staffed with technicians well qualified to judge the merits of plans for new community developments in which your Company has taken an active part in various sections of the country.

[fol. 2968]

Earnings of Subsidiaries

Your company's share of increase in the net assets of subsidiary companies is taken up as credits to earned surplus.

Such increase contributed by various subsidiaries is listed below for both 1952 and 1951:

	1952	1951
Investors Syndicate of America, Inc.	$1,281,887	$ 954,030
Investors Syndicate of Canada, Ltd.	436,368	340,358
Investors Syndicate Title & Guaranty Co.	60,838	57,000
Mortgage Subsidiaries	710,638	203,857
Total	$2,515,731	$1,556,217
Less—Reserves for inter-company profits on Mortgage transactions	374,000	224,000
Dividends Paid	675,000	240,000
Net Total	$1,466,731	$1,092,217

Undistributed earnings of subsidiaries credited to earned surplus aggregated $6,723,918 on December 31, 1952 compared to $5,257,187 on December 31, 1951.

Company Developments

During the year there were two developments worthy of special notice.

First was the establishment of a Customer Relations Department. While the maintenance of close contact with those who do business with us has always been of the first concern to all members of our organization, these efforts have taken various forms and have been conducted through different departments and individuals. The growth of the Company has been such that, during 1952, it was decided to coordinate all these efforts under a single head, responsible to the President of the Company. The

purpose of this Department is to make doubly sure that certificate and shareholders not only are fully and accurately informed about their investments when they make them but that they are kept posted, through such avenues as are open to us, concerning developments affecting those investments.

Later in the year the Company announced the creation of a new and novel retirement plan, available to other companies, which is designed to keep pace with fluctuating costs of living. This plan is unique in that its assets are invested partly in a common stock mutual fund, Investors Stock Fund, Inc., and partly in fixed income certificates of Investors Syndicate of America, Inc. Thus the beneficiary has a fixed income while at the same time realizing the advantages of a managed common stock investment, as a hedge against inflation, and with the objective of growth in value.

This type of retirement plan was recently put into effect for the benefit of officers and employees of I.D.S. on a contributory basis.

Changes in Organization

At a meeting on March 26, 1953, the Board of Directors of Investors Diversified Services, Inc., accepted my resignation as President and chief executive officer and elected as my successor, Robert W. Purcell of New York and Cleveland. I called to the Board's attention that I had already served four years beyond the Company's retirement age. Despite this fact, I shall be happy to continue, as Chairman, my many pleasant years of association with the Company.

I.D.S. is extremely fortunate in obtaining the services of Mr. Purcell who, at 41, brings to his new office many admirable traits—youth, enthusiasm and proved judgment, plus an excellent working knowledge of our operations. He joined the Board of Investors Diversified Services, Inc. in 1949, following the purchase of the controlling interest by Alleghany Corporation, and has since served as Chairman of the Board of

[fol. 2970]

our affiliated mutual fund companies. Mr. Purcell has resigned his offices and directorates in Alleghany Corporation and The Chesapeake & Ohio Railway Company, he had been Vice-Chairman and Vice-President of both corporations.

THE YEAR 1953 promises to be a most interesting one for your Company. Operations of our affiliates and subsidiaries for the first four months have been excellent and prospects for the remainder of the year are encouraging. A feeling of conservative optimism prevails and this, plus the existing favorable business climate, should enable us to continue the healthy operating trend of your Company.

Future Outlook

To the holders of I.D.S. face amount certificates and those of our subsidiaries, the shareholders in I.D.S. and affiliated mutual fund companies—a group totaling in excess of 500,000 accounts—as well as the more than three thousand associates in our organization, go my thanks for their continued confidence and splendid cooperation during the year recently finished.

E. E. Crabb

CHAIRMAN OF THE BOARD

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[fol. 2971]

DECEMBER 31, 1952,

Assets (Notes 2 and 3)

	Market Value		December 31	
	1952	1951	1952	1951
QUALIFIED ASSETS (Note 4):				
Cash:				
On hand and in banks (Note 5)			$ 7,855,986	$ 6,487,454
Deposited with central depositary, states, and provinces				882,636
			$ 7,855,986	$ 7,370,090
Securities (Notes 6 and 7):				
Bonds and notes – at amortized cost:				
United States Government direct obligations	$ 2,675,142	$ 8,090,623	$ 2,801,942	$ 9,802,327
Other bonds and notes	16,113,909	22,011,013	16,400,067	22,297,996
Preferred stocks – at average cost	21,181,919	18,156,254	22,317,891	20,270,487
	$39,970,970	$48,257,890	$ 41,520,500	$ 49,370,800
Mortgages on Real Estate – Principal balances, less unamortized discounts and allowances (Notes 6 and 8):				
First mortgages:				
Insured or committed for insurance by Federal Housing Administration			$ 30,821,192	$ 56,318,069
Partially guaranteed by Veterans Administration			30,037,791	35,957,127
Other first mortgages and first liens on real estate (1952 includes $10,707,870 from subsidiaries)			104,866,054	91,502,970
Second mortgages:				
Fully guaranteed by Veterans Administration			2,104,696	6,185,776
Other			150,000	—
			$179,979,733	$189,963,942
Other Qualified Assets:				
Loans to certificate holders – secured by applicable certificate reserves (Note 6) (includes $816,441 in 1952 and $769,403 in 1951 on certificates issued by a subsidiary)			$ 12,055,397	$ 13,059,450
Real estate – at depreciated cost:				
Acquired through foreclosure of mortgages			204,514	32,282
Other real estate			62,785	232,818
Interest and dividends receivable on qualified investments			1,012,315	1,081,805
Due from brokers			—	21,218
			$ 13,335,011	$ 14,427,553
Total qualified assets			$242,691,230	$261,138,355
OTHER ASSETS:				
Investments in and receivables from subsidiary companies:				
Investments in common stock of wholly owned companies – at book value of underlying net assets, less allowance (Note 9)			$ 8,377,806	$ 6,906,874
Investments in securities of other subsidiary companies at cost			3,450,640	—
Receivables			2,331,878	1,284,425
Other investments in securities – at cost (market value 1952 – $437,816, 1951 – $671,038)			312,720	600,615
First mortgages on real estate – principal balances (1952 includes $343,630 from subsidiaries)			2,105,388	1,874,449
Unimproved real estate – at cost			4,848	49,984
Other receivables – less allowances			679,576	1,509,487
Equipment and leasehold improvements – at cost less depreciation and amortization			907,360	845,935
Other			368,947	304,314
Total other assets			$ 18,538,963	$ 13,176,083
			$261,230,193	$274,314,438

See accompanying notes

[fol. 2972]

with Comparative Figures for the Previous Year

Liabilities (Note 2)

	December 31 1932	1931
CERTIFICATE RESERVES (Notes 1 and 4):		
Installment certificates:		
Reserves to mature:		
Cash surrender values attained at dates of last completed certificate years	$198,182,943	$216,092,685
Reserve payments applicable to current certificate years	11,655,212	13,411,139
Reserves to stabilize financing costs	8,430,711	9,706,012
Advance payments and accrued interest	6,703,090	8,772,554
Other	1,671,023	1,758,901
Fully paid certificates — reserves to mature	13,554,912	9,816,464
Due to unlocated certificate holders	77,536	101,586
	$240,275,427	$259,629,091
CURRENT LIABILITIES, EXCLUSIVE OF CERTIFICATE LIABILITIES:		
Accounts payable:		
Commissions due to sales representatives	$ 511,985	$ 416,723
Subsidiary companies	329,721	67,175
Sundry creditors	624,334	897,099
Unearned interest on loans	147,885	165,328
Undistributed collections from mortgagors and certificate holders	60,630	146,346
Accrued taxes:		
Income (Note 10)	2,280,812	1,273,835
Other	52,934	24,794
Accrued sales representatives' incentive pay bonuses	747,248	619,313
Other	23,668	34,341
	$ 4,779,197	$ 3,645,154
NOTE PAYABLE TO AFFILIATED COMPANY – subordinated	$ —	$ 137,260
DEFERRED CREDIT – mortgage construction loan fees (Note 11)	$ 400,591	$ 427,746
CAPITAL STOCK AND SURPLUS:		
Capital stock:		
Common Class "A" (not preferred and non-voting) – $5 par – authorized, 200,000 shares; issued and outstanding, 175,836.37 shares	$ 879,182	$ 879,182
Common – $5 par – authorized, 140,000 shares; issued and outstanding, 114,908.16 shares	574,541	574,541
Earned surplus, per accompanying statement (Notes 9, 12, 13 and 14):		
Appropriated for additional certificate reserves and contingencies	9,000,000	6,000,000
Unappropriated	5,321,355	3,021,494
	$ 15,774,978	$ 10,475,217
	$261,230,193	$274,314,438

to financial statements

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Year Ended December 31, 1952 with Comparative Figures for the Previous Year

	1952	1951
GROSS INCOME:		
Investment and certificate servicing income:		
Interest on bonds, mortgages, and other loans (includes $214,171 in 1952 and $35,702 in 1951 from subsidiaries)	$10,221,804	$10,694,578
Cash dividends on stocks	992,588	918,801
Installment certificate loading and servicing income (Note 15)	425,849	488,822
	$11,640,241	$12,097,196
Mortgage operations:		
Construction loan fee income (includes $210,334 in 1952 from subsidiaries)	$ 1,674,242	$ 2,311,848
Service fees (includes $848,810 in 1952 and $750,090 in 1951 from subsidiaries)	1,777,720	1,550,869
Cash dividends from subsidiary mortgage companies	675,000	240,000
Profit on real estate construction projects	312,624	—
Premiums on mortgages sold (includes $613,450 in 1952 and $416,613 in 1951 from subsidiaries)	606,566	494,792
Other mortgage income (Note 10)	298,880	364,000
	$ 5,345,032	$ 4,961,169
Underwriting fees from subsidiary and affiliated companies	$15,211,665	$12,570,795
Management fees from subsidiary and affiliated companies	$ 2,446,190	$ 1,849,197
Other income (includes collection fees of $188,118 in 1952 and $150,027 in 1951 from a subsidiary)	$ 342,561	$ 282,440
Total gross income	$34,985,689	$31,760,797
COSTS AND EXPENSES:		
Provision for certificate reserves, less recoveries of $223,591 in 1952 and $289,789 in 1951 from lapses and surrenders (Note 1)	$10,460,139	$11,538,127
Mortgage branch office and agency expenses, including salaries of $939,475 in 1952 and $968,127 in 1951, and after charges to a subsidiary of $179,882 in 1952 and $131,546 in 1951	1,477,445	1,742,827
Commissions and incentive pay bonuses to sales representatives	10,463,219	8,860,953
Other expenses, including salaries of $3,186,249 in 1952 and $3,031,745 in 1951, and after charges to subsidiaries of $908,939 in 1952 and $765,586 in 1951	5,812,055	5,536,846
Total costs and expenses	$28,212,858	$27,478,753
OPERATING INCOME	$ 6,772,831	$ 4,282,044
GAIN (LOSS) ON INVESTMENT TRANSACTIONS (Note 7)	(701,199)	56,818
OTHER INCOME	14,426	66,282
INCOME BEFORE PROVISION FOR INCOME TAXES	$ 6,086,058	$ 4,405,144
PROVISION FOR INCOME TAXES:		
Federal normal and surtaxes (1952 includes $132,000 for prior years) (Note 10)	$ 2,217,000	$ 1,220,000
State	18,000	15,000
	$ 2,235,000	$ 1,235,000
Add net amount applicable to deferred construction loan fees (Note 10)	18,028	136,613
	$ 2,253,028	$ 1,371,613
NET INCOME FOR THE YEAR	$ 3,833,030	$ 3,033,531

See accompanying notes to financial statements

[fol. 2974]

Year Ended December 31, 1952 with Comparative Figures for the Previous Year

	1952	1951
UNAPPROPRIATED		
Balance at Beginning of the Year	$3,021,494	$1,895,746
Net Income for the Year – per accompanying statement	3,833,030	3,033,531
Proportionate Share of Earnings of Subsidiary Companies for the Year, less dividends of $675,000 in 1952 and $240,000 in 1951 included in income, and less allowance of $374,000 in 1952 and $224,000 in 1951 for unrealized inter-company profit on mortgage transactions	1,466,731	1,092,217
	$8,321,255	$6,021,494
Deduction – Appropriated for additional certificate reserves and contingencies	3,000,000	3,000,000
Balance at End of the Year	$5,321,255	$3,021,494
APPROPRIATED FOR ADDITIONAL CERTIFICATE RESERVES AND CONTINGENCIES		
Balance at Beginning of the Year	$6,000,000	$3,000,000
Transferred from Unappropriated Surplus	3,000,000	3,000,000
Balance at End of the Year	$9,000,000	$6,000,000

See accompanying notes to financial statements

1. CERTIFICATE OBLIGATIONS AND RESERVES THEREON

The Company has outstanding eight series of installment certificates which were issued prior to 1944. The certificates provide for stipulated payments by the holder for periods ranging from ten to fifteen certificate years. The Company agrees to pay the face amount of the certificate at maturity or the specified cash surrender values designated in the certificates prior thereto. If a payment is not made when due the maturity date is extended by the period of delay and the certificate does not increase in value during such periods. Payments made in advance of due dates are interest bearing in accordance with the terms thereof. The rate of return to the holders varies according to series and is also affected by delays in making payments and terminations prior to maturity. The Company also has outstanding certain interest bearing obligations designated as fully paid certificates, which for the most part represent contractual conversions from installment certificates.

The Company's reserves are based upon rates which differ by series of certificates and also to a minor extent from year to year within each series. Reserves are maintained for fully paid certificates and advance payments at the stipulated rates. The rates of net cost to average monthly comparable reserve balances were as follows:

	1952	*1951*
Increments on installment certificates	4.23%	4.34%
Interest on advance payments	2.59	2.61
Interest on fully paid certificates	3.97	4.00
Combined	4.17%	4.27%

The Company is not subject to the reserve standards of the Investment Company Act of 1940, including the limitation of the maximum reserve rate to 3½%. If the Company's reserves were based on this 3½% maximum reserve rate, additional reserves of approximately $7,500,000 would be required at December 31, 1952. As of that date the Company had appropriated earned surplus in the amount of $0,000,000 for this purpose and for contingencies.

At December 31, 1952 there were outstanding installment certificates with a maturity value of $304,419,250. Approximately $221,579,450 maturity value of these certificates had five or less certificate years remaining to their maturity. Of this amount, certificates with a maturity value of $195,907,750 have a non-callable option to continue payments for a period of 10 years with a decrease in the rate of cost of approximately ½ of 1%.

The obligations for cash surrender values are specifically provided for in the exact terms of the certificates, and at December 31, 1952 were considerably less than the amount of certificate reserves maintained by the Company.

2. CANADIAN ASSETS AND LIABILITIES

The book value of net assets employed in Canada at December 31, 1952 aggregated $1,276,017 (assets of $21,443,543 less liabilities of $20,167,526), conversion having been made at par of exchange. There was a premium on the Canadian dollar at December 31, 1952 of approximately 3%. Canadian operations are reflected in the income statement on a dollar for dollar basis, except that profit or loss realized on exchange transactions is reflected therein.

3. DEPOSITS OF ASSETS

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 59, Minnesota Statutes, 1945, as amended, with respect to its liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of December 31, 1952, the following assets were so deposited:

DEPOSITS

	At Book Value	*At Value Prescribed Under Agreements*	*Required Deposits*	*Excess*
Deposits to meet certificate liability requirements:				
States and Provinces	$118,935,847	$119,092,730	$115,279,021	$ 3,893,709
Central Depositary	106,249,122	105,589,965	96,815,287	8,774,578
Total	$225,184,969	$224,672,695	$212,094,408	$12,578,287
Deposits with States and Provinces to meet licensing requirements	225,000	225,000	225,000	—
Total	$225,409,969	$224,897,695	$212,319,408	$12,578,287

[fol. 2976]

The deposits consisted of securities at book value of $41,818,718, mortgages with book values of $174,614,011, loans secured by certificates issued by a subsidiary of $796,399, and investments in wholly owned subsidiaries at book value of $8,180,841.

The above deposits included assets with an aggregate book value of $8,682,269, which were qualified under the terms of the deposit agreements but not under the conditions of certificates. The difference of $512,274 between the book values of assets deposited and the values of such assets on bases prescribed under the conditions of deposit agreements, consists principally of the excess of the book value of investments in common stocks of wholly owned subsidiaries, which for purposes of valuation under the central deposit agreement are included at 80% of the Company's equity in net assets of the companies.

4. REQUIREMENTS AS TO QUALIFIED ASSETS

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to asset ratio maintenance provisions. In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and/or assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At December 31, 1952, the Company was required to maintain qualified assets in the amount of $217,401,142 (exclusive of loans on its certificates), and as indicated in the accompanying balance sheet, the Company had qualified assets at that date in excess of such amount. The nature of the qualified assets and the amount thereof are not subject to the provisions of Section 28 of the Investment Company Act of 1940.

5. CASH

At December 31, 1952, the Company held funds collected from mortgagors for future payments of taxes and insurance, and agency collections for others in the aggregate amount of $4,513,020. Drafts issued by the Company which had not been presented for payment at that date aggregated $1,818,403. These amounts, aggregating $6,331,423, have been deducted from the cash balances and from the contra liability accounts.

6. GROSS RATES OF RETURN ON INVESTMENTS

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on securities, mortgages, and certificate loans for the years 1952 and 1951, based upon the monthly average book values of the investments, were as follows:

	1952	1951
Securities	4.01%	3.74%
Mortgages	4.82	4.55
Certificate Loans	5.04	5.08
Combined	4.51%	4.43%

7. SECURITIES

The market values of listed and active securities are based upon closing published market quotations. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that in the absence of available quotations, thirty-one issues were valued at $14,950,150, which in the opinion of the Board of Directors was fair market value. A list of securities held at December 31, 1952 is included as part of this report.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1952 were fully income producing and none were in default. The carrying values of securities at December 31, 1952 exceeded the market values thereof in the amount of $1,424,433, a decrease in unrealized depreciation of $1,018,054 from December 31, 1951. Premiums and discounts on bonds and notes are amortized on a yield basis to maturity.

8. MORTGAGES AND MORTGAGE COMMITMENTS

Mortgages are carried at principal balances less unamortized discounts and allowances of $185,729 at December 31, 1952. Commitments in respect of mortgages at December 31, 1952 aggregated approximately $95,000,000, including $21,002,223 on which partial disbursements had been made.

Principal balances of mortgages of the self-amortizing type held at December 31, 1952 aggregated $139,869,957. In

addition, mortgages with principal balances of $20,717,639 were held at that date on which uniform periodic payments are required but which provide for a larger payment at maturity.

Principal balances of mortgages in respect of which principal or interest payments were past due for more than three months at December 31, 1952 aggregated $2,017,315. Of this amount $381,915 represented mortgages insured by the Federal Housing Administration or partially or fully guaranteed by the Veterans Administration.

INVESTMENTS IN WHOLLY OWNED SUBSIDIARIES

Investments in wholly owned subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets, less an allowance of $1,098,000 at December 31, 1952 for unrealized intercompany profit on mortgage transactions. The market value of securities held by wholly owned subsidiaries at December 31, 1952 was $808,058 in excess of book values, an increase in unrealized appreciation of $1,202,489 from December 31, 1951.

As in previous years, no provision has been made in the financial statements for income taxes which would accrue if undistributed profits of wholly owned subsidiaries were paid as dividends to the Company. Consolidated federal income tax returns have been filed by the Company and its domestic wholly owned subsidiaries for all years subsequent to 1941 and no tax is payable on the dividends received from these subsidiaries in years in which such returns are filed. Also, a credit is allowed against the tax payable on dividends received from wholly owned Canadian subsidiaries for Canadian income taxes paid.

Credits to earned surplus for undistributed earnings of wholly owned subsidiary companies aggregated $6,723,918 at December 31, 1952. The earned surplus of Investors Syndicate of America, Inc., one of the Company's subsidiaries, is restricted as to dividend payments during 1953 by reason of declaration of additional credits for that year at a rate lower than the minimum which could be declared without such restriction. The granting of additional credits during the year ended December 31, 1952 at a rate necessary to remove this restriction would have increased the credits allowed by that company approximately $354,000. Credits to earned surplus for undistributed earnings of that subsidiary aggregated $3,910,871 at December 31, 1952.

10. INCOME TAXES

By reason of the provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries and the Company will file its return for 1952 on that basis. On a separate return basis the Company's federal income tax provision for the year 1952 would have been approximately the same as on a consolidated basis. No excess profits tax was payable for 1952 on either basis. The Bureau of Internal Revenue has not completed examination of federal income tax returns for years subsequent to 1948, and taxes for those years have not been finally determined. Income taxes applicable to deferred construction loan fees (see Note 11) aggregated $260,359 at December 31, 1952 and $278,387 at December 31, 1951, resulting in a net decrease in the amount of the provision allocated to deferred income for the year 1952 of $18,028.

11. DEFERRED CONSTRUCTION LOAN FEES

Fees on construction loans are subject to income taxes in the period received whereas on the book basis they are taken into income as earned. Income taxes applicable to such fees received but deferred on the books are allocated to deferred construction loan fees, and are charged to operations in the period in which the fees are taken into income. Fees deferred at December 31, 1952 are shown net after $260,359 of income taxes applicable thereto.

12. DIVIDEND RESTRICTIONS

Undistributed earnings of subsidiaries included in surplus aggregating $6,723,918 at December 31, 1952 are not available for dividends until paid to the Company.

According to the terms of the Series "G" certificates, no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series "G" certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series "G" certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Payment of additional credits on Series "G" certificates at the rate necessary to remove

the dividend restriction in 1952 would have increased expenses by approximately $901,000 in that year.

Certain dividend restrictions are imposed on face amount certificate companies under subsection (h) of Section 28 of the Federal Investment Company Act of 1940, if minimum certificate reserves are not maintained (see Note 1).

11 CONTINGENT MORTGAGE REPURCHASE AGREEMENT

The Company has endorsed or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 97.99 owned subsidiary, Investors Syndicate Title & Guaranty Company, New York, to which said subsidiary may acquire pursuant to its trust agreements under certain series of such subsidiary's certificates sold prior to 1949. The notes so endorsed or which at December 31, 1952, were subject to such repurchase agreements aggregated $16,529,136 including $12,571,871 of FHA insured mortgages.

14 EMPLOYEES' RETIREMENT PLAN

A contributory retirement plan was adopted as of December 31, 1952 for benefit of officers and employees of the Company who meet the prescribed requirements. The plan has been approved by the United States Treasury Department as an exempt employees' trust under provisions of the Internal Revenue Code.

The Company plans to make annual contributions to fund the past service cost on the basis of a level funding method over a period of approximately eleven and one-half years from the effective date of the plan to conform with the maximum deduction allowable in computing federal income taxes, and plans to fund the current service costs annually as accrued.

Part of the cost of the plan will be paid by Investors Syndicate of America, Inc., a subsidiary, which is charged for cost of services furnished by the Company not otherwise covered by fees and commissions.

The total contribution for the year 1952 for past service costs was $101,425 of which $7,888 was charged to Investors Syndicate of America, Inc., resulting in a net charge against income for the year of $93,537. The remaining portion of the maximum past service cost of the plan at December 31, 1952 is estimated at approximately $1,100,000, of which approximately $85,000 will be charged to Investors Syndicate of America, Inc. No current service costs were incurred in 1952. It is estimated that the current service cost for the year 1953 will be approximately $142,000 of which approximately $13,000 will be charged to Investors Syndicate of America, Inc. The foregoing amounts are before reductions in cost due to anticipated income tax benefits.

Certain limitations are placed on Company contributions under the plan. No contributions shall be made by the Company if its net income (before income taxes but after taking up undistributed earnings of subsidiaries) for the previous year would have been less than $1,250,000 after deduction of the current year contribution. Also, no contribution shall be made by the Company to the plan for any year subsequent to 1953 if certain ratios of capital and surplus to total certificate reserves are not maintained.

15 SERVICE FEES AND LOADING CREDITS ON INSTALLMENT CERTIFICATES

Service fees and loading credits on installment certificates are taken into income as received. The service fees represent charges made to certificate holders on installment payments made on less than an annual basis to cover the additional costs involved in making the collections, additional record keeping; and the loss of the use of the funds. The loading credits, for the most part, represent amounts deducted from installment payments to cover annual costs incident to servicing the certificates.

16 ANTI TRUST SUIT

The Company and four of its subsidiaries are defendants in a suit brought by the Federal government on April 28, 1951 under Acts commonly known as the Clayton and Sherman anti-trust laws in connection with the placing of hazard insurance on mortgaged properties. This action, among other things, seeks to enjoin the companies from receiving any compensation from the writing, placing, or selling of hazard insurance. Gross insurance commissions received by the Company and its subsidiaries aggregated $196,115 in 1952.

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ACCOUNTANTS' REPORT

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS
NORTHWESTERN BANK BUILDING
MINNEAPOLIS 2, MINN.

To the Board of Directors and Security Holders
of Investors Diversified Services, Inc.

We have examined the balance sheet of Investors Diversified Services, Inc. as of December 31, 1952 and the statements of net income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We secured direct confirmation of the securities owned at December 31, 1952 from the custodians as to those on deposit and in safekeeping, and from brokers with respect to uncompleted transactions.

In our opinion, the accompanying balance sheet and the statements of net income and earned surplus present fairly the financial position of Investors Diversified Services, Inc. at December 31, 1952 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

PEAT, MARWICK, MITCHELL & CO.

Minneapolis, Minnesota
April 6, 1953

Summary of

INVESTMENTS IN SECURITIES

DECEMBER 31, 1952

Description	Market Value*
BONDS AND NOTES	
Domestic:	
U.S. Government—direct obligations	$ 2,675,142
U.S. Government—chartered institutions	458,348
Municipal	963,750
Banks	900,000
Finance Companies	2,995,331
Industrial	4,861,868
Canadian:	
Dominion Government and Dominion Government Guaranteed	1,176,476
Provincial	120,469
Municipal	587,298
Public Utility	279,756
Banks	438,593
Investment Trusts	195,000
Finance Companies	1,907,336
Industrial	1,229,684
Total bonds and notes	$18,789,051
PREFERRED STOCKS	
Domestic:	
Railroad	$ 4,039,865
Public Utility	4,859,303
Finance Companies	209,581
Industrial	12,087,670
Total preferred stocks	$21,196,419
COMMON STOCKS	
Domestic:	
Investment Trusts	$ 423,315
Industrial	1
Total common stocks	$ 423,316
Total investments in securities	$40,408,786
CLASSIFICATION IN ACCOMPANYING BALANCE SHEET:	
Under qualified assets	$39,970,970
Under other assets	437,816
Total, as above	$40,408,786

Details of

INVESTMENTS IN SECURITIES

DECEMBER 31, 1952

Description	Principal Amount	Market Value*
BONDS AND NOTES		
United States Government-direct obligations:		
Treasury Certificate of Indebtedness, "A", 1⅛%, 2-15-53	$ 30,000	$ 30,009
Treasury Bonds, 2%, 12-15-54/52	15,000	14,925
Treasury Bonds, 2¼%, 6-15-56/54	35,000	35,350
Treasury Bonds, 2½%, 12-15-68/63	650,000	631,722
Treasury Bonds, 2½%, 3-15-70/65	135,000	110,436
Treasury Bonds, 2½%, 6-15-72/67	60,000	57,300
Treasury Bonds, 2½%, 12-15-72/67	1,880,000	1,795,400
		$ 2,675,142
OTHER BONDS AND NOTES:		
United States Government Chartered Institutions:		
F.H.A. War Housing Insurance Fund, Deb. "H", 2½%, 12-30-59 to 1-13-60	$ 47,400	$ 47,400
F.H.A. Mutual Mortgage Insurance Fund, Deb. "E", 2¼%, 7-1-78	12,700	12,700
Federal Land Banks, Consolidated Farm Loan 2⅛%, 5-1-58	400,000	398,248
		$ 458,348
Municipal:		
West Virginia (State of) Turnpike Revenue, Series "A", 3⅛%, 12-1-89	$1,000,000	$ 963,750
Banks:		
Colonial Trust Co. of New York, Capital Deb., 4¼%, 4-1-53 to 4-1-60	$ 900,000	$ 900,000†
Finance Companies:		
Domestic Finance Corp., S.F. Deb., Series "B", 4%, 4-1-58	$ 250,000	$ 245,331†
Family Loan Co., 4¼%, Senior Serial Notes, 10-1-53 to 10-1-59	425,000	425,000†
First Acceptance Corp., Subordinated Note, 5%, 1-15-56	500,000	500,000†

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[fol. 2981]

Description	Number of Shares	Market Value*
PREFERRED STOCKS (Continued)		
Industrial (Continued):		
General Controls Co., 6% Cum.	2,000	$ 47,750
General Tire & Rubber Co., 5¼% 1st Cum.	1,020	72,930
Golden State Co., Ltd., 4% Cum. Conv.	2,600	183,625
Hollingsworth & Whitney Co., $4.00 Cum.	1,250	113,594
Interchemical Corp., 4½% Cum.	2,500	227,500
Koppers Co., Inc., 4% Cum.	4,000	371,000
Leonard Refineries, Inc., 6% Cum.	5,000	500,000†
Liquid Carbonic Corp., 3½% Cum. Conv.	2,300	159,850
McQuay-Norris Mfg. Co., 4¼% Cum. Conv.	100	8,737
Northland Greyhound Lines, Inc., 3¾% Cum.	2,040	156,060
Oliver Corp., 4½% Cum. Conv.	2,550	239,700
Seabrook Farms Co., 4½% Cum.	4,000	400,000†
St. Regis Paper Co., 4.40% Cum., Series "A", 1st	2,500	230,000
Sylvania Electric Products, Inc., $4.00 Cum.	1,630	134,271
Thrifty Drug Stores Co., Inc., 4¼% Cum., Series "B"	3,916	391,600†
Toledo Blade Co., 4½% Cum.	714	71,400†
United Aircraft Corporation, 5% Cum. Conv.	2,500	264,063
U. S. Steel Corp., 7% Cum.	2,800	397,600
Wonder Rice Mills, Inc., $6.00 Cum.	10,000	988,600†
		$12,087,670
Total Preferred Stocks		$21,196,419
COMMON STOCKS:		
Investment Trusts:		
Investors Mutual, Inc.	10,000	$ 146,694*§
Investors Selective Fund, Inc.	10,000	99,469*§
Investors Stock Fund, Inc.	10,000	177,152*§
		$ 423,315
Industrial:		
Wonder Rice Mills, Inc., Warrants to Purchase Common Stock		$ 116
Total Common Stocks		$ 423,316
Total Investments in Securities		$40,408,786

* *See Note 7 to financial statements for basis of valuation.*

† *At fair value in the opinion of the Board of Directors of the Company — not currently quoted.*

* *Affiliated companies.*

§ *Classified as "other assets" in accompanying balance sheet.*

SUPPLEMENTARY INFORMATION

YEAR ENDED DECEMBER 31, 1952

Purchases and Sales of Securities

During the year ended December 31, 1952, purchases of securities, other than United States Government bonds, aggregated $30,000,305. The aggregate cost of securities sold, other than United States Government bonds, was $34,815,309.

Compensation Paid to Officers and Directors and Affiliated Persons Thereof

During the year 1952 regular directors fees aggregating $13,800 were paid to directors of the Company who were not employed as executive officers or as consultants. Two of the company's directors who were employed as executive officers and one director employed for half of the year as an executive officer and half of the year as a consultant were paid aggregate compensation of $141,250 for such services during the year 1952 and did not receive any additional compensation for acting as directors. Special compensation in the amount of $4,000 was paid to one director for legal and advisory services.

Compensation to executive officers (including those who were also company directors and excluding assistants to Vice Presidents, to the Secretary and to the Treasurer) aggregated $350,008 for the periods which they held office during the year ended December 31, 1952.

During the year 1952, the company paid the following amounts to wholly owned subsidiaries for servicing of mortgages and/or collection of certificate payments:

Investors Syndicate Title & Guaranty Co.	$88,588
Investors Syndicate of Canada, Ltd.	15,770

Certain officers and directors of Investors Diversified Services, Inc., are directors and/or officers of such wholly owned subsidiary companies.

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Board of Directors

Earl E. Chase	*Chairman, Minneapolis, Minnesota*
Joseph M. Fitzsimmons	*Modern Woodmen of America, Rock Island, Ill*
Edmond E. Lincoln	*Consulting Economist, Wilmington, Delaware*
Robert W. Purcell	*President,* Minneapolis, Minnesota*
H. Dudley Swim	*Private Business Interests, Carmel, California*

Principal Officers

Earl E. Chase	*Chairman of the Board*
Robert W. Purcell	*President**
Harold K. Bradford	*Vice President, Corporate Affairs*
J. W. Callender	*Assistant to President*
Harvey C. Carr	*Vice President, State Regulations*
Grady Clark	*Vice President, General Sales Manager*
H. Vincent Fleet	*Manager, Investment Department*
Thomas L. Kenkaly	*Auditor*
C. Donald McGuckian	*Vice President, Mortgage Operations*
Willis L. Norton	*General Counsel*
James R. Ridgway	*Vice President, Mortgage Operations*
Donald E. Ryan	*Vice President, Mortgage Operations*
Harry C. Thompson	*Secretary and Treasurer*
Norman R. Waag	*Vice President, Controller*

Executive offices	Roanoke Building, Minneapolis, Minnesota
Independent Public Accountants	Peat, Marwick, Mitchell & Co.
Economic Consultant	Galen Van Meter
	Stock transferable at the offices of the Company, Minneapolis, Minnesota

*Elected March 26, 1953

In the United States District Court
Defendant Kirby Exhibit No. K 363

Diversions

DIVERSIFIED SERVICES, INC.

Sixtieth Anniversary Year 1894-1954

ANNUAL REPORT

year ended December 31, 1953

Building for the Future

The year 1954 marks the 60th Anniversary of Investors Diversified Services, Inc. The year also significantly records a point of achievement higher than any yet attained during the Company's history. The remarkable growth of IDS in these sixty years is proof of the soundness of the idea from which the Company originated — an idea rooted in public service and developed to meet the changing needs of average Americans in every corner of the nation.

It is an appropriate augury that as we observe our 60th Anniversary we prepare to occupy this year our newly constructed, modern offices in the "Investors Building," which covers the greater part of a city block in the heart of the Minneapolis financial district.

In providing adequate space for the future expansion of our services, we give material evidence of our faith and confidence in the American way of life and in our Company's efforts to help in furthering the country's economic developments through investments in American industries and homes.

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[fol. 2985]

Diversified Services, Inc.
Annual Report - 1953

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Copies of this Report are being made available to banks, financial agencies and institutions, for their files for ready reference. This material under no circumstances is to be used in the solicitation of applications for investment certificates or shares in investment companies.

[fol. 2986]

Highlights of the year

	1953	1952
★ Net income including undistributed earnings of wholly owned subsidiaries	$ 7,908,055	$ 5,299,761
Per Share*	3.41	3.65
★ Total assets under management of Investors Group	1,252,763,000	1,116,146,000
★ Sales of certificates of subsidiaries (face amount value)	332,821,000	303,365,000
★ Sales of mutual fund shares (including reinvested dividends)	148,408,000	142,845,000
★ Certificates matured		
IDS	60,241,000	45,568,000
Wholly Owned Subsidiaries	6,794,000	7,413,000

*Based on shares outstanding after 5 for 1 stock split, effective April 20, 1954.

May 23, 1954

to certificate holders and stockholders

Investors Diversified Services, Inc.

THE SUBSTANTIAL GROWTH in the earnings of your Company and in the assets under its management distinguished the year 1953 as a peak year.

Net income of IDS, and undistributed earnings of wholly owned subsidiaries, advanced to $7,908,055, compared with $5,299,761 in 1952. Net income of IDS alone amounted to $5,898,066 compared with $3,833,030 in 1952. The Company's share of the 1953 undistributed earnings of its subsidiaries was $2,009,989 compared with $1,466,731 for the previous year. As has been the practice for the past several years, all of the earnings were retained in the business. At the year-end, the Company had reached the strongest financial position in its history.

Assets of the Investors Group under management continued to rise and at December 31, 1953, were at an all time high of $1,252,763,000. On page 15 you will find a brief description of each of the subsidiaries and affiliates and a current statement of their assets.

The principal operations of IDS, which began as a face amount certificate company, are as follows:

1. Distribution of face-amount certificates and mutual investment company shares.
2. Management of security investments for subsidiary and affiliated companies.
3. Management of its own investments and servicing face-amount certificates issued by IDS.
4. Origination and servicing of mortgage loans for its own portfolio, for subsidiary companies, and for non-affiliated institutional investors.
5. Operation of wholly-owned subsidiary companies issuing face-amount certificates and of mortgage subsidiaries.

These operations are reviewed in the following pages.

distribution of securities

THE SALES REPRESENTATIVES of IDS and its wholly owned subsidiaries sell only certificates and shares issued by the Investors Group. This sales force, which currently numbers over 2,330 representatives, sold more face-amount certificates and more shares in 1953 than ever before in the Company's history.

Total sales for the companies in the Investors Group were as follows:

Face Amount Certificates	*1953*	*1952*
Investors Syndicate of America, Inc. (1)	$266,078,094	$241,445,710
Investors Syndicate of Canada, Ltd. (2)	49,101,600	44,907,900
Investors Syndicate Title & Guaranty Co. (3)	17,641,119	17,010,993
Total Face Amount value	$332,820,813	$303,364,603
Mutual Funds		
Investors Mutual, Inc. (1)	$100,612,656	$ 99,339,635
Investors Selective Fund, Inc. (1)	2,483,021	3,493,104
Investors Stock Fund, Inc. (1)	14,991,904	14,572,822
Investors Mutual of Canada, Ltd. (2)	10,426,937	9,031,117
Total Mutual Funds	$128,514,518	$126,436,678

(1) Distributed by IDS
(2) Distributed by IS of Canada, Ltd.
(3) Distributed by IST & G. Co.

investment management

MANAGEMENT SUPERVISION of securities demands continuous attention and study, and to meet this requirement we have enlarged our Investment Department personnel. To provide for the future we have instituted a program of training young men to become our senior industry specialists, thus insuring continuity of sound investment management. The investment organization of the Investors Group is graphically presented on page 14.

Evidence that shareholders in our affiliated mutual funds appreciate sound performance is shown by the high percentage of shareholders who reinvested dividends in additional shares—65% in 1953.

Total security investments managed by the Investors Group at respective year-ends were as follows:

Face Amount Certificate Companies	*1953*	*1952*
Investors Syndicate of America, Inc. (1)	$ 52,513,618	$ 48,263,308
Investors Syndicate of Canada, Ltd. (2)	15,086,907	13,143,248
Investors Syndicate Title & Guaranty Co. (3)	275,590	287,780
Mutual Funds		
Investors Mutual, Inc. (1)	500,821,516	430,247,458
Investors Selective Fund, Inc. (1)	12,889,539	11,643,795
Investors Stock Fund, Inc. (1)	55,730,809	46,174,480
Investors Mutual of Canada, Ltd. (2)	29,986,217	21,218,306
Total Security Investments	$667,304,196	$570,978,375

(1) Managed by IDS
(2) Managed by IS of Canada, Ltd.
(3) Managed by IST & G. Co.

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[fol. 2989]

investment income

As you know, IDS has not issued face amount certificates since December, 1940. Certificates issued before that date are now maturing in heavy volume, and assets held by the Company to assure payment of certificate obligations are decreasing as the obligations are paid.

Last year, the Company's own assets declined from $261,230,193 at the close of 1952 to $242,806,028 at the 1953 year-end, due principally to the retirement of certificates at maturity. With fewer assets invested, the gross return likewise declined during the year, although the average rate of return showed a slight increase over the 1952 percentage.

	Interest & Dividend Income		*Gross Rate of Return*	
	1953	*1952*	*1953*	*1952*
Government Bonds & Commercial Paper	$ 288,151	$ 373,478	2.66%	2.25%
Other Bonds	620,436	798,004	4.43	5.11
Preferred Stocks	1,181,998	933,633	4.82	4.52
Common Stocks	21,930	38,932	7.36	7.14
Mortgages	7,710,849	8,370,286	4.64	4.62
Certificate Loans	573,773	626,888	5.02	5.04
Other	73,973	53,149	4.40	3.00
Total	$10,471,130	$11,214,392		
Average Return			4.57%	4.51%

certificate reserves

Since the Company's certificates were issued prior to the effective date of the Investment Company Act of 1940, it is not subject to the reserve standards established by the Act. However, as indicated in the following table, sufficient earned surplus has been set aside to place the reserves on a basis sufficient to meet the Act's minimum requirements.

	Dec. 31 1953	*Dec. 31 1952*	*Dec. 31 1951*
Approximate additional reserve which would be required by the 1940 Act	$ 6,300,000	$7,500,000	$9,500,000
Earned surplus appropriated for additional certificate reserves	6,300,000	7,500,000	6,000,000
Additional reserves necessary to comply with 1940 Act	none	none	$3,500,000
Capital and surplus, including surplus appropriated to reserve for contingencies	$17,383,033	$8,274,978	$4,473,217

[fol. 2990]

analysis of installment certificates

The following table shows certificate retirement figures for the period 1941-1953 and sets forth the estimated amounts which will be retired through 1958:

(Face amount 000 omitted)

	Series "50,000" "200,000" and "A"	"B" & "C"	"D"	"E"	"G"	Total All Installment Certificates
Yield to Holder (1)	5½%	5%	4.4%	4%	3%	
Outstanding 12-31-40	$88,278	$140,400	$81,944	$145,491	$224,808	$680,521
Net Retirements for 13 years 1941-1953	85,558	125,544	73,932	293,688	137,906	716,628
Outstanding 12-31-53	$ 2,720	$ 14,856	$ 8,012	$151,803	$ 86,902	$263,893
Estimated Net Retirement 1954 to 1958 Inclusive	1,860	11,666	6,350	86,238	60,733	136,847
Estimated Outstanding 12-31-58	$ 860	$ 3,190	$ 1,662	$ 65,565	$ 25,769	$127,046

(1) On annual payment basis

As shown by the table, the older and high-cost certificates, Series "D" and prior series, now represent less than 10% of the Company's outstanding certificates and are no longer an important problem. The cost of certificate money continued to decline to 4.12% in 1953 from 4.17% the previous year.

I.D.S. [illegible] **across the nation...**

Are nationwide in scope and vary from construction loans to individual mortgages

certificate maturities and optional settlements

PARTICULAR ATTENTION is called to optional settlement clauses in the Company's outstanding certificates. Depending on their personal investment objectives, some certificate holders have chosen to receive cash at maturity dates and others have elected either to adopt optional settlements or to extend their maturities. The following table shows the settlements made during 1953:

Options Elected	*No. of Accounts*	*Maturity Amounts*
Cash Settlements	13,111	$37,113,000
Annuity Certain Settlements	2,367	9,196,000
Extension of Maturity	4,591	13,932,000
	20,069	$60,241,000

mortgage operations

THE FACE AMOUNT certificate companies in the Investors Group have traditionally directed a substantial portion of their investment funds to the real estate mortgage field. In 1953, for example, the Mortgage Division of IDS originated approximately $92,000,000 in mortgage loans, the majority of which were made in connection with construction loans on single family residences. During the past three years, which have been marked by a heavy volume of home building activity, there has been a trend towards the building of larger homes. An increase in the average size of the American family has created a demand for three and four bedroom homes with two or more baths. IDS loans have financed the building of thousands of such houses. Other mortgage activity has involved the financing of community business centers and shopping districts.

[fol. 2992]

mortgages

Another important function of the Mortgage Division is the servicing of mortgage loans for others, on a fee basis. HSB is not only one of the largest mortgage institutions in the U.S., but one of the largest servicers of mortgages for other institutions. The extent of our mortgage activity is shown by the following table:

	Number	Amount
Owned by HSB	14,152	$[illegible]
Serviced for subsidiary companies	10,833	[illegible]
Serviced for others	24,653	[illegible]
Total	49,638	$[illegible]

HSB maintains lending offices in 17 principal cities of the U.S. These offices are staffed to handle all phases of mortgage operations.

A substantial portion of the income from the Company's mortgage operations in 1953 came as a direct result of near record home building in the United States. The year 1954 may witness a modest decline in housing construction.

The level of income to the Company from this source in future years will, of course, be contingent on the extent to which the need and demand for new homes continues to justify a high volume of building.

earnings of subsidiaries

HDS owns ALL of the outstanding capital stock (except directors' qualifying shares) of three companies issuing face amount certificates. As shown in the table below, the operations of these companies produced very satisfactory results in the year just ended.

The mortgage subsidiaries are engaged primarily in the construction and sale of single family homes. The highly satisfactory earnings of these companies is the result of the high level of building activity maintained during the year.

The Company's share of undistributed earnings of these subsidiary companies is included in the earned surplus of the Company. Your Company does not expect to receive income in the form of cash dividends from its face amount certificate subsidiaries in the near future. These companies are growing and will require capital and surplus commensurate with their growth. The mortgage subsidiaries referred to in the following table are, in effect, branch offices of our mortgage loan division. Their income, therefore, is readily available to the Company in the form of dividends when appropriate action is deemed advisable.

Subsidiary earnings and dividends for the last two years are shown below:

Less Income Certificate Subsidiaries	1953	1952
Investors Syndicate of America, Inc.	$1,703,803	$1,581,882
Investors Syndicate of Canada, Ltd.	678,380	136,368
Investors Syndicate Title & Guaranty Co.	68,364	66,838
Mortgage Subsidiaries	2,313,050	710,648
Total	$4,763,888	$2,513,734
Dividends from Mortgage Subsidiaries	2,120,000	673,000
Undistributed Earnings	$2,593,888	$1,840,734
Less Reserves for Inter-Company Profits on Mortgage Transactions	587,800	374,000
Undistributed Earnings Credited to Earned Surplus	$2,006,088	$1,466,734

Earned surplus of the Company has been increased over a period of years by credits from undistributed earnings of subsidiaries totalling $8,733,907 on December 31, 1953. This amount is compared with $6,727,918 at the previous year-end.

Sources and Disposition of Funds

SOURCES		DISPOSITION	
Mortgage Payments Received	$ 33,992,000	$ 61,263,000	Securities Purchased
Certificate Payments Received	9,480,000	6,020,000	Paid Certificate Holders on Surrenders
Interest & Dividends on Securities	2,107,000	39,212,000	Paid Certificate Holders on Maturities
Underwriting & Management Fees	21,339,000		
Certificate Loans (Net)	1,865,000	20,484,000	Expenses and Commissions
Securities Sold	52,572,000		
		91,739,000	Disbursements on New Mortgage Loans
Decrease in Cash Balance	2,370,000		
Miscellaneous (Net)	2,262,000		
Mortgages Sold	82,813,000		
	$218,720,000	$218,720,000	

management

In August, 1953 the Board of Directors of IDS elected Mr. Robert W. Purcell to the office of Chairman. Concurrently, Mr. Joseph M. Fitzsimmons was elected President of the Company. Mr. Fitzsimmons has served on the IDS Board of Directors since 1951 and has had many years of experience in financial management.

On January 5, 1954, Mr. James H. Clark, of Dallas, Texas was elected to the Board of Directors, following the resignation of Mr. H. Dudley Swim, who had served as director for two years.

At a directors' meeting on April 20, 1954, three new directors were elected to the IDS Board. They are: Mr. William E. Eppler, Eppler & Company, New York, Mr. Thomas J. Deegan, Jr., Alleghany Corporation, New York, and Mr. Clint W. Murchison, Jr., Murchison Brothers, Dallas, Texas.

In February, 1954, Mr. Virgil C. Sullivan was elected Vice President — Finance, a newly created office. Mr. Sullivan possesses a thorough knowledge of the investment field and will coordinate the investment, mortgage and treasury activities for all companies in the Investors Group.

On March 2, 1954, Mr. W. I. Nenton, General Counsel of the Company for many years, was elected to the newly created office of Vice President — Law.

Later in the same month Mr. John W. McCarter was elected to the office of General Counsel. He comes to IDS with an extensive background in corporate finance and general legal practice.

[fol. 2996]

Mr. Earl J. Crabb, who has guided the Company through many years of growth as President and as Chairman of the Board, is now Chairman of the Executive Committee of the Board.

outlook

YOUR IDS MANAGEMENT looks to the Company's long term future with a high degree of confidence. Results for the first quarter of 1954 indicate continuing and healthy growth.

IDS is proud of its part in encouraging private ownership through accumulation and of its investment in American homes and industry. We believe that through our services we are helping to build a strong and progressive America.

conclusion

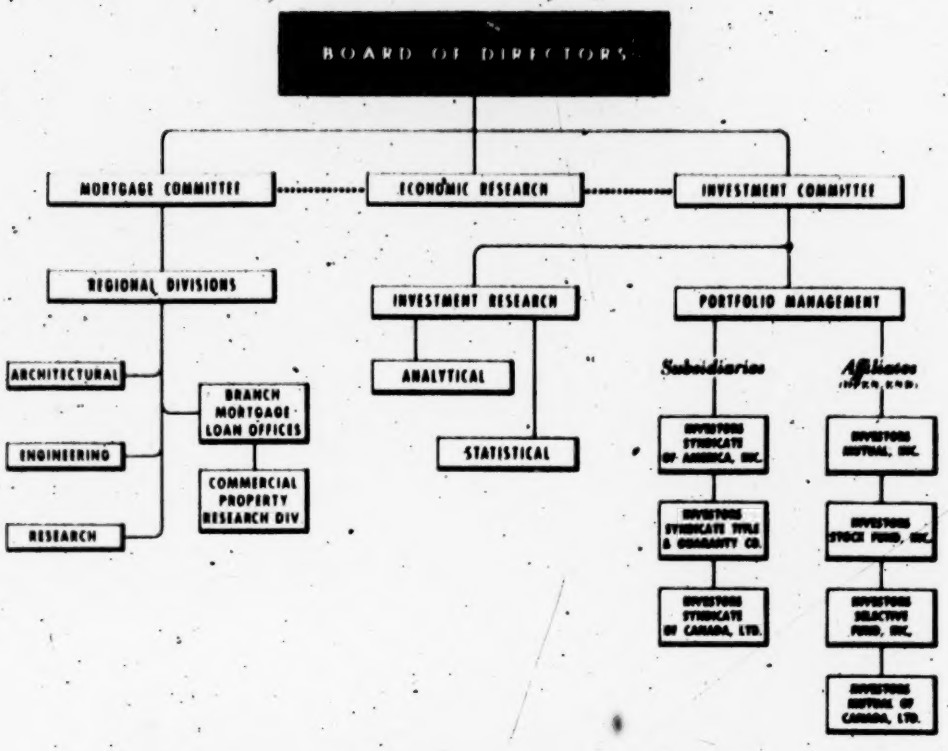
ON BEHALF OF OURSELVES and the entire IDS management, we desire to express to our certificate holders and to our stockholders our appreciation for their constant good will. We wish also to thank the more than 3,500 persons in our organization for their loyal and efficient services, which have contributed in large measure to the outstanding results achieved by the Company in 1953.

R. W. Purcell

CHAIRMAN OF THE BOARD

PRESIDENT

The [illegible] of the



INVESTORS DIVERSIFIED SERVICES, INC.

acts as investment manager of its own assets and those of its subsidiary and affiliated companies shown above. This chart illustrates the comprehensive organizational approach to the selection and protection of the hundreds of millions of dollars of investments in the portfolios of these companies. Investment management of such broad scope is usually available only to individuals, large financial corporations and estates having substantial capital to invest.

[fol. 2998]

"Investors Group"

	Date Organized	Assets as of March 31, 1954
PARENT COMPANY		
Investors Diversified Services, Inc.	1894	$237,697,639
This, the parent company of the Investors group, is a Minnesota corporation operating under a charter granted in July, 1894. From that date to December 31, 1940, its principal business consisted of issuing and selling its own face amount certificates and of investing the proceeds from such certificates. Today its principal activities, in addition to the investment management of its own assets, including real estate financing, are: (1) the distribution of the certificates and shares of certain of its subsidiary and affiliated companies, respectively, and (2) to act as investment manager for them.		
SUBSIDIARIES		
Investors Syndicate of America, Inc.	1940	$284,426,778
An issuing face amount certificate company with assets primarily in the real estate mortgage field, "I.S.A." has always played an important role in home ownership. Today, it is, in addition, financing an increasing number of large-scale housing projects and shopping centers, subject to government restrictions in the building field; a few of them are illustrated.		
Investors Syndicate Title & Guaranty Co.	1928	$ 35,510,594
This New York State subsidiary of I.D.S. invests primarily in mortgages, both in and out of New York. The company distributes its own face amount certificates in that state.		
Investors Syndicate of Canada, Ltd.	1940	$ 72,691,823*
This I.D.S. subsidiary sells its own face amount certificates and distributes the shares of its mutual affiliate, identified below, for which it also acts, by contract, as investment manager. Its own investments largely consist of Canadian mortgages and other Canadian securities.		
AFFILIATES		
Investors Mutual, Inc.	1940	$572,601,651
Investors Selective Fund, Inc.	1945	$ 15,307,608
Investors Stock Fund, Inc.	1945	$ 66,273,714
These are three open-end investment companies of the mutual type, commonly known as "mutual funds." Each of them is owned by its shareholders, and hence are I.D.S. affiliates rather than subsidiaries. Investors Diversified Services is, by contract, their investment manager and principal underwriter. While the portfolio of each of them is widely diversified and fully managed, each has a different investment objective. Investors Stock Fund holds a broadly diversified cross-section of common stocks, emphasizing the growth factor; Investors Selective Fund is virtually limited to debt obligations and preferred stocks, while Investors Mutual, largest of the three, is a "balanced" fund, holding both senior securities and common stocks in its portfolio.		
Investors Mutual of Canada, Ltd.	1950	$ 34,461,730*
This company is, in effect, the Canadian equivalent of the American Investors Mutual; it is an open-end investment company of the "balanced" type. Its investments are primarily, but not exclusively, in Canadian securities. Investors Syndicate of Canada is, by contract, its investment manager and the distributor of its shares, which are sold only in Canada.		

*Canadian Dollars

Thus the total gross assets of the companies comprising the Investors group are $1,318,971,537

Balance Sheet, December 31, 1953, with Comparative

Assets

(Notes 2 and 3)

	Market Value 1953	Market Value 1952	December 31 1953	December 31 1952
QUALIFIED ASSETS (Note 4):				
CASH ON HAND AND IN BANKS (Note 5)			$ 5,485,520	$ 7,855,986
SECURITIES (Notes 6 and 7):				
Bonds and notes — at amortized cost:				
United States Government — direct obligations	$ 2,702,128	$ 2,675,142	$ 2,800,931	$ 2,801,942
Other bonds and notes	20,583,837	16,113,909	20,843,800	16,400,667
Preferred stocks — at average cost	24,844,962	21,181,919	26,776,260	22,317,891
	$48,130,927	$39,970,970	$ 50,420,991	$ 41,520,500
MORTGAGES ON REAL ESTATE — Principal balances, less unamortized discounts and allowances (Notes 6 and 8):				
First mortgages:				
Insured or committed for insurance by Federal Housing Administration			$ 31,382,805	$ 36,821,192
Partially guaranteed by Veterans Administration			33,935,220	36,037,791
Other first mortgages and first liens on real estate (includes $10,960,690 in 1953 and $10,707,870 in 1952 from subsidiaries)			86,173,632	104,866,054
Second mortgages:				
Fully guaranteed by Veterans Administration			961,[illegible]	2,104,696
Other			134,[illegible]	150,000
			$152,787,819	$179,979,733
OTHER QUALIFIED ASSETS:				
Loans to certificate holders — secured by applicable certificate reserves (Note 6) (includes $826,495 in 1953 and $816,441 in 1952 on certificates issued by a subsidiary)			$ 10,738,314	$ 12,055,397
Real estate — at depreciated cost:				
Acquired through foreclosure of mortgages			113,788	204,514
Other real estate			11,841	62,785
Interest and dividends receivable on qualified investments			799,040	1,012,315
			$ 11,662,983	$ 13,335,011
Total qualified assets			$220,357,313	$242,691,230
OTHER ASSETS:				
Investments in and receivables from subsidiary companies:				
Investments in common stock of wholly owned companies—at book value of underlying net assets, less allowance (Note 9)			$ 10,387,394	$ 8,377,606
Investments in securities of other subsidiary companies at cost			3,451,280	3,450,640
Receivables			2,887,493	2,331,878
Other investments in securities — at cost (market value 1953 — $404,672, 1952 — $437,816)			298,220	312,720
First mortgages on real estate — principal balances (includes $996,566 in 1953 and $343,630 in 1952 from subsidiaries)			3,032,768	2,105,388
Second mortgage on real estate from subsidiary — principal balance			133,000	—
Unimproved real estate — at cost			40,423	4,848
Other receivables — less allowances			850,138	679,576
Equipment and leasehold improvements — at cost less depreciation and amortization			1,001,257	907,360
Other			366,542	368,947
Total other assets			$ 22,448,715	$ 18,538,963
			$242,806,028	$261,230,193

See accompanying notes

[fol. 3000]

Figures for the Previous Year

Liabilities

(Note 2)

	December 31 1953	1952
CERTIFICATE RESERVES (Notes 1 and 4):		
Installment certificates:		
Reserves to mature:		
Cash surrender values attained at dates of last completed certificate years	$169,866,141	$198,182,
Reserve payments applicable to current certificate years	9,504,183	11,655,
Reserves to stabilize financing costs	6,827,616	8,430,
Advance payments and accrued interest	4,975,273	6,703,
Other	1,517,711	1,671,
Fully paid certificates — reserves to mature	20,731,089	13,554,
Due to unlocated certificate holders	99,825	77,
	$213,521,838	$240,275,
CURRENT LIABILITIES, EXCLUSIVE OF CERTIFICATE LIABILITIES:		
Accounts payable:		
Commissions due to sales representatives	$ 491,353	$ 511,
Subsidiary companies	68,703	329,
Sundry creditors	751,516	624,
Unearned interest on loans	134,816	147,
Undistributed collections from mortgagors and certificate holders	78,598	60,
Accrued taxes:		
Income (Note 10)	2,611,073	2,280,
Other	42,136	52,
Accrued sales representatives' incentive pay bonuses	787,658	747,
Other	20,809	23,
	$ 4,986,664	$ 4,779,
DEFERRED CREDIT — mortgage construction loan fees (Note 11)	$ 614,493	$ 400,
CAPITAL STOCK AND SURPLUS:		
Capital stock:		
Common Class "A" (not preferred and non-voting) — $5 par — authorized, 260,000 shares; issued and outstanding, 175,836.37 shares	$ 879,182	$ 879,
Common — $5 par — authorized, 140,000 shares; issued and outstanding, 114,908.16 shares	574,541	574,
Earned surplus, including undistributed earnings of wholly owned subsidiaries, per accompanying statement (Notes 9, 12, 13 and 14):		
Appropriated for additional certificate reserves and contingencies	9,000,000	9,000,
Unappropriated	13,229,310	5,321,
	$ 23,683,033	$ 15,774,
	$242,806,028	$261,230,

to financial statements

# of Net Income

Year Ended December 31, 1953 with Comparative Figures for the Previous Year

	1953	1952
GROSS INCOME:		
Investment and certificate servicing income:		
Interest on bonds, mortgages, and other loans (includes $688,153 in 1953 and $214,171 in 1952 from subsidiaries)	$ 9,267,182	$10,221,804
Cash dividends on stocks	1,203,948	992,588
Installment certificate loading and servicing income (Note 15)	350,330	425,849
	$ 10,821,460	$11,640,241
Mortgage operations:		
Construction loan fee income (includes $491,643 in 1953 and $210,334 in 1952 from subsidiaries)	$ 2,036,794	$ 1,674,242
Service fees (includes $997,406 in 1953 and $848,810 in 1952 from subsidiaries)	1,987,109	1,777,720
Dividend income from subsidiary mortgage companies after allowance of $493,003 in 1953 for unrealized intercompany profit	1,676,997	675,000
Profit on real estate construction projects	56,144	312,624
Premiums on mortgages sold (includes $758,929 in 1953 and $613,450 in 1952 from subsidiaries)	760,613	636,566
Other mortgage income (Note 16)	311,551	268,880
	$ 6,829,208	$ 5,345,032
Underwriting fees from subsidiary and affiliated companies	$ 16,111,878	$15,211,665
Management fees from subsidiary and affiliated companies	$ 2,959,989	$ 2,446,190
Other income (includes collection fees of $221,651 in 1953 and $188,118 in 1952 from a subsidiary)	$ 439,500	$ 342,561
Total gross income	$ 37,162,035	$34,985,689
COSTS AND EXPENSES:		
Provision for certificate reserves, less recoveries of $172,934 in 1953 and $223,591 in 1952 from lapses and surrenders (Note 1)	$ 9,369,937	$10,460,130
Mortgage branch office and agency expenses, including salaries of $1,026,333 in 1953 and $939,475 in 1952, and after charges to a subsidiary of $217,728 in 1953 and $179,882 in 1952	1,317,863	1,477,445
Commissions and incentive pay bonuses to sales representatives	11,184,725	10,463,219
Other expenses, including salaries of $3,701,721 in 1953 and $3,186,249 in 1952, and after charges to subsidiaries of $1,162,019 in 1953 and $908,939 in 1952	6,671,891	5,812,055
Total costs and expenses	$ 28,744,418	$28,212,858
OPERATING INCOME	$ 8,417,617	$ 6,772,831
GAIN (LOSS) ON INVESTMENT TRANSACTIONS (Note 7)	38,575	(701,199)
OTHER INCOME	13,771	14,426
INCOME BEFORE PROVISION FOR INCOME TAXES	$ 8,469,963	$ 6,086,058
PROVISION FOR INCOME TAXES:		
Federal normal and surtaxes (1952 includes $132,000 for prior years) (Note 10)	$ 2,471,000	$ 2,217,000
State	22,000	18,000
	$ 2,493,000	$ 2,235,000
Add net amount applicable to deferred construction loan fees (Note 10)	78,897	18,028
	$ 2,571,897	$ 2,253,028
NET INCOME FOR THE YEAR	$ 5,898,066	$ 3,833,030

See accompanying notes to financial statements

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[fol. 3002]

Statement of Earned Surplus

Year Ended December 31, 1953 with Comparative Figures for the Previous Year

	1953	1952
UNAPPROPRIATED		
BALANCE AT BEGINNING OF THE YEAR	$ 5,321,255	$3,021,494
NET INCOME FOR THE YEAR — per accompanying statement	5,898,066	3,833,030
PROPORTIONATE SHARE OF EARNINGS OF SUBSIDIARY COMPANIES FOR THE YEAR, less dividends of $2,170,000 in 1953 and $675,000 in 1952 included in income, and less allowance of $587,899 in 1953 and $374,000 in 1952 for unrealized inter-company profit on mortgage transactions	2,009,989	1,486,731
	$13,229,310	$8,321,255
DEDUCTION — Appropriated for additional certificate reserves and contingencies	—	3,000,000
BALANCE AT END OF THE YEAR	$13,229,310	$5,321,255
APPROPRIATED FOR ADDITIONAL CERTIFICATE RESERVES AND CONTINGENCIES		
BALANCE AT BEGINNING OF THE YEAR	$ 9,000,000	$6,000,000
TRANSFERRED FROM UNAPPROPRIATED SURPLUS	—	3,000,000
BALANCE AT END OF THE YEAR	$ 9,000,000	$9,000,000
Classified at December 31, 1953 as follows:		
For additional certificate reserves	$ 6,300,000	
For general contingencies	2,700,000	
Total, as above	$ 9,000,000	

See accompanying notes to financial statements

Notes to Financial Statements

1. CERTIFICATE OBLIGATIONS AND RESERVES THEREON

The Company has outstanding eight series of installment certificates which were issued prior to 1941. The certificates provide for stipulated payments by the holder for periods ranging from ten to fifteen years. The Company agrees to pay the face amount of the certificate at maturity or the specified cash surrender values designated in the certificates prior thereto. If a payment is not made when due the maturity date is extended by the period of delay and the certificate does not increase in value during such periods. Payments made in advance of due dates are interest bearing in accordance with the terms thereof. The rate of return to the holders varies according to series and is also affected by delays in making payments and terminations prior to maturity. The Company also has outstanding certain interest bearing obligations designated as fully paid certificates, which for the most part represent contractual conversions from installment certificates.

The Company's reserves are based upon rates which differ by series of certificates and also to a minor extent from year to year within each series. Reserves are maintained for fully paid certificates and advance payments at the stipulated rates. The rates of net cost to average monthly comparable reserve balances were as follows:

	1953	*1952*
Increments on installment certificates	4.18%	4.23%
Interest on advance payments	2.56	2.59
Interest on fully paid certificates	3.94	3.97
Combined	4.12%	4.17%

The Company is not subject to the reserve standards of the Investment Company Act of 1940, including the limitation of the maximum reserve rate to 3½%. If the Company's reserves were based on this 3½% maximum reserve rate, additional reserves of approximately $6,300,000 would be required at December 31, 1953. As of that date the Company had appropriated earned surplus in that amount for this purpose.

At December 31, 1953, there were outstanding installment certificates with a maturity value of $263,893,166. Approximately $167,961,600 maturity value of these certificates had five or less certificate years remaining to their maturity. Of this amount, certificates with a maturity value of $149,194,250 have a non-callable option to continue payments for a period of 10 years with a decrease in the rate of cost of approximately ½ of 1%.

The obligations for cash surrender values are specifically provided for in the exact terms of the certificates, and at December 31, 1953 were considerably less than the amount of certificate reserves maintained by the Company.

2. CANADIAN ASSETS AND LIABILITIES

The book value of net assets employed in Canada at December 31, 1953 aggregated $1,890,123 (assets of $20,157,500 less liabilities of $18,267,377); conversion having been made at par of exchange. There was a premium on the Canadian dollar at December 31, 1953 of approximately 2¾%. Canadian operations are reflected in the income statement on a dollar for dollar basis, except that profit or loss realized on exchange transactions is reflected therein.

3. DEPOSITS OF ASSETS

Certain deposits of assets are maintained by the Company pursuant to requirements of various states and provinces, and a central deposit is maintained with the Treasurer of the State of Minnesota pursuant to Chapter 59, Minnesota Statutes, 1945, as amended, with respect to its

[fol. 3004]

liabilities, as defined in such Act, under certificates in the United States to the extent that such liabilities are not covered by deposits maintained with other states. As of December 31, 1953, the following assets were so deposited:

The deposits consisted of securities at book value of $50,719,210, mortgages with book values of $151,439,643, loans secured by certificates issued by a subsidiary of $804,384, and investments in wholly owned subsidiaries at book value of $10,132,134.

The above deposits included assets with an aggregate book value of $11,220,673, which were qualified under the terms of the deposit agreements but not under the conditions of certificates.

	At Book Value	*At Value Prescribed Under Agreements*	*Required Deposits*	*Excess*
Deposits to meet certificate liability requirements:				
States and Provinces	$100,071,795	$100,094,745	$ 97,031,113	$ 3,063,632
Central Depositary	112,818,576	112,597,856	92,702,494	19,895,362
Total	$212,890,371	$212,692,601	$189,733,607	$22,958,994
Deposits with States and Provinces to meet licensing requirements	225,000	225,000	225,000	–
Total	$213,115,371	$212,917,601	$189,958,607	$22,958,994

4. REQUIREMENTS AS TO QUALIFIED ASSETS

Under conditions of its certificates, the Company is required to maintain qualified assets on designated liabilities thereunder, less loans thereon, in ratios ranging from 100% to 110%. Such designated liabilities consist of the cash values as set forth in the various certificates, exclusive of Paid Up certificates and exclusive of advance payments on Series "D" and "F" installment certificates, which in the opinion of legal counsel for the Company are not designated as liabilities subject to asset ratio maintenance provisions. In general, qualified assets required to be maintained shall consist of cash, government bonds, obligations issued or guaranteed in whole or in part by the United States or Canadian governments or by government-chartered institutions or agencies, first mortgages and first deeds of trust on improved real estate, and or assets of the kind which life insurance companies are permitted by the laws of the State of New York to hold or acquire. At December 31, 1953, the Company was required to maintain qualified assets in the amount of $192,920,901 (exclusive of loans on its certificates), and as indicated in the accompanying balance sheet, the Company had qualified assets at that date in excess of such amount. The nature of the qualified assets and the amount thereof are not subject to the provisions of Section 28 of the Investment Company Act of 1940.

At December 31, 1953, the Company held funds collected from mortgagors for future payments of taxes and insurance, and agency collections for others in the aggregate amount of $3,907,763. Drafts issued by the Company which had not been presented for payment at that date aggregated $2,228,807. These amounts, aggregating $6,136,570, have been deducted from the cash balances and from the contra liability accounts.

Notes to Financial Statements *Continued*

6 RATES OF RETURN ON INVESTMENTS

The average gross rates of return (exclusive of profit or loss on sales) realized by the Company on securities, mortgages, and certificate loans for the years 1953 and 1952, based upon the monthly average book values of the investments, were as follows:

	1953	1952
Securities	4.25%	4.01%
Mortgages	4.64	4.62
Certificate Loans	5.02	5.04
Combined	4.58%	4.51%

7 SECURITIES

The market values of listed and active securities are based upon closing published market quotations. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that in the absence of available quotations, thirty-one issues were valued at $15,675,282 ($403,592 less than cost) which, in the opinion of the Board of Directors was fair value. A list of securities held at December 31, 1953 is included as part of this report.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1953 were fully income producing and none were in default. The carrying values of securities at December 31, 1953 exceeded the market values thereof in the amount of $2,183,612, an increase in unrealized depreciation of $759,179 from December 31, 1952. Premiums and discounts on bonds and notes are amortized on a yield basis to maturity.

8 MORTGAGES AND MORTGAGE COMMITMENTS

Mortgages are carried at principal balances less unamortized discounts and allowances of $810,705 at December 31, 1953. Commitments in respect of mortgages at December 31, 1953 aggregated approximately $70,267,408, including $21,007,236 on which partial disbursements had been made.

Principal balances of mortgages in respect of which principal or interest payments were past due for more than three months at December 31, 1953 aggregated $194,886. Of this amount $155,714 represented mortgages insured by the Federal Housing Administration or partially or fully guaranteed by the Veterans Administration.

Principal balances of mortgages of the self-amortizing type held at December 31, 1953 aggregated $108,125,439. In addition, mortgages with principal balances of $31,622,683 were held at that date on which uniform periodic payments are required but which provide for a larger payment at maturity.

9 INVESTMENTS IN WHOLLY OWNED SUBSIDIARIES

Investments in wholly owned subsidiary companies are recorded on the basis of the Company's equity in the book values of the subsidiaries' net assets, less allowances of $1,685,899 at December 31, 1953 for unrealized intercompany profit on mortgage transactions. The market value of securities held by wholly owned subsidiaries at December 31, 1953 was $40,067 in excess of book value, a decrease in unrealized appreciation of $767,991 from December 31, 1952.

As in previous years, no provision has been made in the financial statements for income taxes which would accrue if undistributed profits of wholly owned subsidiaries were paid as dividends to the Company. Consolidated federal income tax returns have been filed by the Company and its domestic wholly owned subsidiaries for all

years subsequent to 1941 and no tax is payable on the dividends received from these subsidiaries in years in which such returns are filed. Also, a credit is allowed against the tax payable on dividends received from wholly owned Canadian subsidiaries for Canadian income taxes paid.

Credits to earned surplus for undistributed earnings of wholly owned subsidiary companies aggregated $8,733,907 at December 31, 1953. The earned surplus of Investors Syndicate of America, Inc., one of the Company's subsidiaries, is restricted as to dividend payments during 1954 by reason of declaration of additional credits for that year at a rate lower than the minimum which could be declared without such restriction. The granting of additional credits during the year ended December 31, 1953 at a rate necessary to remove this restriction would have increased the credits allowed by that company approximately $432,000. Credits to earned surplus for undistributed earnings of that subsidiary aggregated $5,110,735 at December 31, 1953.

10. INCOME TAXES

By reason of the provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated federal income tax return with its domestic subsidiaries and the Company will file its return for 1953 on that basis. On a separate return basis the Company's federal income tax provision for the year 1953 would have been approximately $200,000 more than on a consolidated basis. No excess profits tax was payable for 1953 on either basis. The Bureau of Internal Revenue has not completed examination of federal income tax returns for years subsequent to 1948, and taxes for those years have not been finally determined. Income taxes applicable to deferred construction loan fees (see Note 11) aggregated $181,462 at December 31, 1953 and $260,359 at December 31, 1952, resulting in a net decrease in the amount of the provision allocated to deferred income for the year 1953 of $78,897.

11. DEFERRED CONSTRUCTION LOAN FEES

Fees on construction loans are subject to income taxes in the period received whereas on the book basis they are taken into income as earned. Income taxes applicable to such fees received but deferred on the books are allocated to deferred construction loan fees, and are charged to operations in the period in which the fees are taken into income. Fees deferred at December 31, 1953 are shown net after $181,462 of income taxes applicable thereto.

12. DIVIDEND RESTRICTIONS

Undistributed earnings of subsidiaries included in surplus aggregating $8,733,907 at December 31, 1953 are not available for dividends until paid to the Company.

According to the terms of the Series "G" certificates, no dividends shall be distributed to stockholders of the Company in any calendar year unless, not later than December 31, of the second preceding year, the Board of Directors shall have determined upon a credit to each Series "G" certificate which shall attain a new optional settlement value during such calendar year in an amount equal to at least one-half of one per cent of such new optional settlement value. The Board of Directors has not determined upon additional credits for Series "G" certificates attaining new optional settlement values subsequent to December 31, 1943, and therefore, the Company is presently restricted from paying dividends to its stockholders. Payment of additional credits on Series "G" certificates at the rate necessary to remove the dividend restriction in 1953 would have increased expenses by approximately $305,000 in that year.

Certain dividend restrictions are imposed on face-amount certificate companies under sub-section (h) of Section 28 of the Federal Investment Company Act of 1940, if minimum certificate reserves are not maintained — see Note 1.

13. CONTINGENT MORTGAGE REPURCHASE AGREEMENT

The Company has endorsed, or agreed to repurchase under certain conditions, notes secured by first mortgages and first deeds of trust which it sells to its 97.2% owned subsidiary, Investors Syndicate Title & Guaranty,

to Financial Statements *Continued*

Company, New York, or which said subsidiary may acquire pursuant to its trust agreements under certain series of such subsidiary's certificates sold prior to 1942. The notes so endorsed or which on December 31, 1953, were subject to such repurchase agreements aggregated $14,218,984 including $11,307,895 of FHA insured mortgages.

A contributory retirement plan was adopted as of December 31, 1952 for benefit of officers and employees of the Company who meet the prescribed requirements. The plan has been approved by the United States Treasury Department as an exempt employees' trust under provisions of the Internal Revenue Code.

The Company plans to make annual contributions to fund the past service cost on the basis of a level funding method over a period of approximately eleven and one-half years from the effective date of the plan to conform with the maximum deduction allowable in computing federal income taxes, and plans to fund the current service costs annually as incurred.

Part of the cost of the plan will be paid by Investors Syndicate of America, Inc., a subsidiary, which is charged for cost of services furnished by the Company not otherwise covered by fees and commissions.

The total contribution for the year 1953 for past service costs was $95,080 of which $8,353 was charged to Investors Syndicate of America, Inc., resulting in a net charge against income for the year of $86,727. The remaining portion of the maximum past service cost of the plan at December 31, 1953 is estimated at approximately $900,000, of which approximately $75,000 will be charged to Investors Syndicate of America, Inc. Current service costs for the year 1953 aggregated $124,795 of which $13,500 was charged to Investors Syndicate of America, Inc., resulting in a net charge against income for the year of $111,295. The foregoing amounts are before reductions in cost due to anticipated income tax benefits.

Certain limitations are placed on Company contributions under the plan. No contributions shall be made by the Company if its net income (before income taxes but after taking up undistributed earnings of subsidiaries) for the previous year would have been less than $1,250,000 after deduction of the current year contribution. Also, no contribution shall be made by the Company if certain ratios of capital and surplus to total certificate reserves are not maintained.

SERVICE FEES AND LOADING CREDITS ON INSTALLMENT CERTIFICATES

Service fees and loading credits on installment certificates are taken into income as received. The service fees represent charges made to certificate holders on installment payments made on less than an annual basis to cover the additional costs involved in making the collections, additional record keeping, and the loss of the use of the funds. The loading credits, for the most part, represent amounts deducted from installment payments to cover annual costs incident to servicing the certificates.

[illegible] SUIT

The Company and four of its subsidiaries are defendants in a suit brought by the Federal government on April 26, 1951 under Acts commonly known as the Clayton and Sherman anti-trust laws in connection with the placing of hazard insurance on mortgaged properties. This action, among other things, seeks to enjoin the companies from receiving any compensation from the writing, placing, or selling of hazard insurance. Gross insurance commissions received by the Company and its subsidiaries aggregated $261,173 in 1953.

[fol. 3008]

Accountants' Report

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS
NORTHWESTERN BANK BUILDING
MINNEAPOLIS 2, MINN.

NEW YORK
ATLANTA
BALTIMORE
BILLINGS
BOSTON
BUFFALO
CHARLOTTE
CHICAGO
CINCINNATI
CLEVELAND
COLUMBUS
DALLAS
DENVER
DETROIT
GREENSBORO
HOUSTON
INDIANAPOLIS
KANSAS CITY
LINCOLN
WATERBURY
LOS ANGELES
MEMPHIS
MILWAUKEE
MINNEAPOLIS
NEWARK
NEW ORLEANS
OKLAHOMA CITY
OMAHA
PHILADELPHIA
PITTSBURGH
PORTLAND
ST. LOUIS
SAN FRANCISCO
SAN JOSE
SEATTLE
SHREVEPORT
TULSA
WASHINGTON

AFRICA
AUSTRALIA
CANADA
CONTINENTAL EUROPE
CUBA
GREAT BRITAIN
HONG KONG
INDIA
JAPAN
MEXICO
SOUTH AMERICA

The Board of Directors and Security Holders
of Investors Diversified Services, Inc.:

We have examined the balance sheet of Investors Diversified Services, Inc. as of December 31, 1953 and the statements of net income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We secured direct confirmation of the securities owned at December 31, 1953 from the custodians as to those on deposit and in safekeeping, and from brokers with respect to incompleted transactions.

In our opinion, the accompanying balance sheet and the statements of net income and earned surplus present fairly the financial position of Investors Diversified Services, Inc. at December 31, 1953 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

PEAT, MARWICK, MITCHELL & CO.

Minneapolis, Minnesota
April 8, 1954

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[fol. 3009]

Summary of Investment in Securities

December 31, 1953

Description	Market Value**
Bonds and Notes	
Domestic:	
U.S. Government — direct obligations	$ 2,702,128
U.S. Government — chartered institutions	4,115,456
Commercial Paper	2,690,301
Municipal	1,963,430
Bank	800,000
Finance Company	2,134,750
Industrial	2,902,003
Canadian:	
Dominion Government and Dominion Government Guaranteed	1,139,600
Provincial	122,031
Municipal	530,805
Public Utility	287,025
Bank	439,125
Investment Trust	197,500
Finance Company	2,197,656
Industrial	1,064,155
Total bonds and notes	$23,285,965
Preferred Stocks	
Domestic:	
Railroad	$ 3,951,463
Public Utility	4,978,649
Finance Company	643,640
Insurance	1,122,000
Industrial	14,149,210
Total preferred stocks	$24,844,962
Common Stocks	
Domestic:	
Investment Trust	$ 404,670
Industrial	2
Total common stocks	$ 404,672
Total investments in securities	$48,535,599
Classification in Accompanying Balance Sheet:	
Under qualified assets	$48,130,927
Under other assets	404,672
Total, as above	$48,535,599

[redacted] of Investments

Description	Principal Amount	Market Value**
United States Government — direct obligations:		
Treasury Certificate of Indebtedness, Series "A," 2¼%, 2-15-54	$ 30,000	$ 30,131
Treasury Bonds, 2%, 12-15-54/52	15,000	15,047
Treasury Bonds, 2¼%, 6-15-56/54	35,000	35,208
Treasury Bonds, 2½%, 12-15-68/63	650,000	638,016
Treasury Bonds, 2½%, 3-15-70/65	115,000	112,233
Treasury Bonds, 2½%, 6-15-72/67	60,000	57,881
Treasury Bonds, 2½%, 12-15-72/67	1,880,000	1,813,612
		$ 2,702,128
OTHER BONDS AND NOTES:		
United States Government Chartered Institutions:		
F.H.A. War Housing Insurance Fund, Deb., Series "H", 2½%, 1-13-60 to 12-9-62	$ 46,550	$ 45,154
F.H.A. Mutual Mortgage Insurance Fund, Deb., Series "E", 2¾%, 7-1-73 and 7-1-78	24,450	23,227
Federal Home Loan Banks, Consolidated Note, 2.10%, 5-17-54	2,565,000	2,565,000
Federal Intermediate Credit Banks, Consolidated Deb., 2.70%, 6-1-54	180,000	180,450
Federal Intermediate Credit Banks, Consolidated Deb., 2.35%, 8-2-54	1,300,000	1,301,625
		$ 4,115,456
Commercial Paper:		
General Electric Supply Corp., Discount Note, 2¼%, 3-15-54	$1,200,000	$ 1,194,450
Pacific Finance Corp., Discount Note, 2⅛%, 2-23-54	500,000	498,406
Yellow Manufacturing Acceptance Corp., Discount Note, 2%, 2-15-54	1,000,000	997,445
		$ 2,690,301

Details

Investments in Securities

Description	Number of Shares	Market Value**
PREFERRED STOCKS *(Continued)*		
Industrial (Continued):		
Hollingsworth & Whitney Co., $4.00 Cum.	1,250	$ 106,875
Interchemical Corp., 4½% Cum.	2,500	223,750
Koppers Co., Inc., 4% Cum.	4,000	327,000
Leonard Refineries, Inc., 6% Cum.	5,000	500,000*
Liquid Carbonic Corp., 3½% Cum. Conv.	2,300	149,213
McQuay Norris Mfg. Co., 4¼% Cum. Conv.	100	7,337
Northland Greyhound Lines, Inc., 3⅜% Cum.	2,040	147,135
Oliver Corp., 4½% Cum. Conv.	2,550	184,875
Royal Gorge Bridge and Amusement Corp., 6% Cum.	20,000	2,000,000*
Seabrook Farms Co., 4½% Cum.	4,000	280,000*
St. Regis Paper Co., 4.40% Cum., Series "A", 1st	2,500	236,250
Sylvania Electric Products, Inc., $4.00 Cum.	1,630	133,660
Thrifty Drug Stores Co., Inc., 4¼% Cum., Series "B"	3,684	327,876*
United Aircraft Corporation, 5% Cum. Conv.	2,500	260,000
U. S. Steel Corp., 7% Cum.	5,000	716,250
Wonder Rice Mills, Inc., $6.00 Cum.	9,675	967,500*
		$14,149,210
Total Preferred Stocks		$24,844,962
[redacted]		
Investment Trust:		
Investors Mutual, Inc.	10,000	$ 141,140†‡
Investors Selective Fund, Inc.	10,000	97,530†‡
Investors Stock Fund, Inc.	10,000	166,000†‡
		$ 404,670
Industrial:		
Basic Refractories, Inc., Warrants to Purchase 30,000 shares of Common Stock		$ 1*‡
Wonder Rice Mills, Inc., Warrants to Purchase 40,000 shares of Common Stock		1*‡
		$ 2
Total Common Stocks		$ 404,672
Total Investments in Securities		$48,535,599

*At fair value in the opinion of the Board of Directors of the Company—not currently quoted.
†Affiliated companies.
‡Classified as "other assets," in accompanying balance sheet.
**See Note 7 to financial statements for basis of valuation.

Supplementary Information

Year Ended December 31, 1953

PURCHASES AND SALES OF SECURITIES

During the year ended December 31, 1953, purchases of securities, other than United States Government bonds, aggregated $50,289,599. The aggregate cost of securities sold, other than United States Government bonds, was $41,405,189.

COMPENSATION PAID TO OFFICERS AND DIRECTORS AND AFFILIATED PERSONS THEREOF

During the year ended December 31, 1953 regular directors fees aggregating $7,063 were paid to directors of the Company who were not simultaneously employed as executive officers or as consultants. Four of the Company's directors who were employed as executive officers and one director employed as a consultant were paid aggregate compensation of $162,612 for such services during the period they served as directors and did not receive any additional compensation for acting as directors. No special compensation was paid to any director.

Compensation to executive officers (including those who were also company directors and excluding assistants to Vice Presidents, to the Secretary and to the Treasurer) aggregated $426,379 for the periods which they held office during the year ended December 31, 1953.

During the year ended December 31, 1953, the Company paid the following amounts to wholly owned subsidiaries for servicing of mortgages and/or collection of certificate payments:

Investors Syndicate Title & Guaranty Co.	$51,833
Investors Syndicate of Canada, Ltd.	13,213

Certain officers and directors of Investors Diversified Services, Inc., are directors and/or officers of such wholly owned subsidiary companies.

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Board of Directors

ROBERT W. PURCELL	*Chairman, Minneapolis, Minnesota*
JAMES H. CLARK	*Murchison Brothers, Dallas, Texas*
EARL E. CRABB	*Chairman, Executive Committee, Bellevue, Washington*
THOMAS J. DEEGAN, JR.	*Alleghany Corporation, New York*
WILLIAM E. EPPLER	*Eppler & Company, New York*
JOSEPH M. FITZSIMMONS	*President, Minneapolis, Minnesota*
EDMOND E. LINCOLN	*Retired Economist, duPont Co., Wilmington, Delaware*
CLINT W. MURCHISON, JR.	*Murchison Brothers, Dallas, Texas*

Principal Officers

ROBERT W. PURCELL	*Chairman of the Board*
EARL E. CRABB	*Chairman of the Executive Committee*
JOSEPH M. FITZSIMMONS	*President*
HAROLD K. BRADFORD	*Vice President, Corporate Affairs*
J. W. CALLENDER	*Assistant to Chairman, Customer Relations*
HARVEY C. CARR	*Vice President, State Regulations*
GRADY CLARK	*Vice President, General Sales Manager*
H. VINCENT FLETT	*Manager, Investment Department*
THOMAS L. KENEALY	*General Auditor*
J. W. MCCARTIN	*General Counsel*
C. DONALD MCGUIGGAN	*Vice President, Mortgage Operations*
HARRY T. NEWCOMB	*Secretary*
WILLIS I. NORTON	*Vice President, Law*
JAMES R. RIDGWAY	*Vice President, Mortgage Operations*
VIRGIL C. SULLIVAN	*Vice President, Finance*
HARRY C. THOMPSON	*Treasurer*
NORMAN B. WAAG	*Vice President, Controller*

Stock Transfer Agent & Registrar	First National Bank, Minneapolis, Minnesota
	Roanoke Building, Minneapolis, Minnesota
	Peat, Marwick, Mitchell & Co

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Printed in U.S.A.

[fol. 3012]

Sixtieth Annual Report... **1953**

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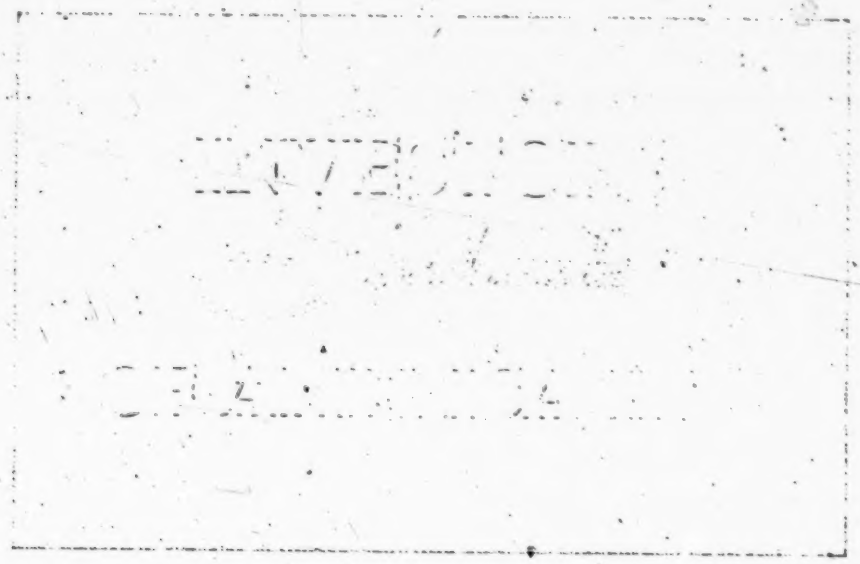
IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT No. K-364



ANNUAL REPORT TO CERTIFICATE HOLDERS

FOR THE YEAR ENDED DECEMBER 31, 1949

[fol. 3014]

AT YEAR END	1949	1948
Total Assets	$129,202,370	$102,[illegible]
Number of Certificates Outstanding	143,115	[illegible]27,375
Maturity Value of Certificates Outstanding	$687,769,203	$603,117,[illegible]80

FOR THE YEAR		
Increase in Assets	$ 26,726,816	$ 26,0[illegible]5,373
Number of New Certificates Issued	26,766	30,547
Maturity Value of Certificates Issued	$143,855,695	$167,731,250

Highlights of 1949

This statement is not to be considered an offer of sale or solicitation of an offer to buy any security. It has been prepared for existing certificate holders of the Company and when used otherwise must be preceded by or in conjunction with the current Prospectus.

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[fol. 3015]

INVESTORS SYNDICATE OF AMERICA, INC.

Executive Offices: ROANOKE BUILDING, MINNEAPOLIS, MINNESOTA

BOARD OF DIRECTORS

E. E. CRABB, *Chairman of the Board*
144 West Minnehaha Parkway
Minneapolis, Minn.

GUY H. RAMSEY
4500 Moorland Avenue
Minneapolis, Minn.

V. C. JENSEN
Fergus Falls, Minnesota

ROSS S. MARSHALL
20776 Brantley Road
Shaker Heights, Ohio

D. E. RYAN
4501 E. Lake Harriet Boulevard
Minneapolis, Minn.

GEORGE M. STEWART
18 Park Lane
Minneapolis, Minn.

FRANCIS K. PURCELL
Watertown, New York

JOHN W. BARTON
2719 Humboldt Avenue South
Minneapolis, Minn.

ECKLEY P. SCHOOLEY
300 North State Street
Dover, Delaware

PRINCIPAL OFFICERS

E. E. CRABB, 144 West Minnehaha Parkway, Minneapolis, Minn. ..... *President*
HAROLD K. BRADFORD, 57 Groveland Terrace, Minneapolis, Minn. ..... *Vice President*
HARVEY C. CARR, 3328 Blaisdell Avenue, Minneapolis, Minn. ..... *Vice President*
GRADY CLARK, 3548 Irving Avenue South, Minneapolis, Minn. ..... *Vice President*
C. DONALD MCGUIGGAN, 4526 Bruce Avenue, Minneapolis, Minn. ..... *Vice President*
CLYDE J. MOORE, 4510 Wooddale Avenue, Minneapolis, Minn. ..... *Vice President*
JAMES R. RIDGWAY, SR., 2212 Newton Avenue South, Minneapolis, Minn. ..... *Vice President*
NORMAN B. WAAG, 9 Parkview Terrace, Minneapolis, Minn. ..... *Vice President and Controller*
JAMES B. RACEY, 3835 Brookview Drive, St. Louis Park, Minn. ..... *Treasurer*
ROBERT W. PETERSON, 2112 St. Anthony Boulevard, Minneapolis, Minn. ..... *Secretary*
T. L. KENEALY, 5419 Bryant Avenue South, Minneapolis, Minn. ..... *Auditor*

Independent Public Accountants: George Rossetter & Co., 1320 Rand Tower, Minneapolis, Minnesota
Central Depositary: Marquette National Bank, Minneapolis, Minnesota
Principal Distributor and Investment Manager: Investors Diversified Services, Inc., Roanoke Building, Minneapolis, Minnesota

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President's Letter

TO THE CERTIFICATE HOLDERS

DURING 1949 our Company continued to make notable progress. It is evidenced by the financial statements in this report, by the services offered to you, our certificate holders, and by our substantial contributions to the healthy economic growth of the nation.

Thrift and savings are as American as apple pie. Our country was built on the willingness of Americans to save some part of their earnings and to invest them in the future of the nation. The best guarantee that our way of life will endure and that America will remain strong, lies in the continuing thriftiness of our people.

Investors Syndicate of America is, quite simply, a medium to attain this end. Our certificates give their holders an opportunity to accumulate funds in a systematic way over a specific number of years. They are adaptable to any number of special purposes: to build an estate, to prepare for retirement, to plan for your children's education, to travel, to start a new business or for any special objective for which a substantial sum of money may be needed at some specific future date. The variety and scope of their terms permit them to be written to suit almost any financial need the purchaser has in mind.

GROWTH

Indicative of the need for the services performed by Investors Syndicate of America, and the success of its operation, is the increase in its total assets to $129,202,370, at the end of 1949 compared with $102,475,554 at the end of the previous year. During 1949 a total of 26,766 new certificates were issued with a maturity value of almost $144 million. Of this amount, $28 million, or approximately 20 per cent, were written accompanied by a self-completion insurance plan now available to purchasers of such certificates. This insurance feature makes certain the completion of the certificate holder's program in the event of his death.

The maturity value of all outstanding certificates at the end of 1949 was $687,769,203.

HOUSING FOR AMERICA

The resources of Investors Syndicate of America have, in turn, been invested in the American economy: to aid in its growth and to further the well-being of its people. For example, we have played and continue to play an important part in meeting one of the most critical of postwar problems; namely, the short-

age of homes. The need for homes has been great—few had been built during the long war years. After the war, marriages passed all previous records, our population increased tremendously and millions of families were without adequate and satisfactory housing. Much has since been done. In 1948 and 1949 a record volume of new housing was built, totaling in the neighborhood of 1,800,000 units. Investors Syndicate of America alone, in this period, financed $67 million of mortgages, approximately 83 per cent of which represented the financing of newly constructed homes.

OPERATIONS

Interest return on such mortgages together with dividends and interest on corporate investment provided a gross income of $4,912,060 for the year ended December 31, 1949. Of this amount $2,993,518 was credited to certificate holders account to increase their reserve values. Operating expenses of the Company were $1,273,282. The net income of $659,641 compares with $363,837 in 1948. Inasmuch as no dividends were paid, all of such earnings were carried into surplus account, thereby further strengthening our financial structure. Total capital and surplus at the end of 1949 amounted to $3,361,075 against $2,701,434 at the end of the previous year.

Thus Investors Syndicate of America continues to serve America in a dual capacity: (1) as a medium through which you, and others as certificate holders, can plan your future based on a program of systematic thrift; (2) as a means for investing these funds constructively in the growth and expansion of our national economy.

GENERAL

Our family of certificate holders has increased steadily since the Company was organized late in 1940, upon the sound basis provided by Congress through the Investment Act of 1940. Each year we have been responsible for a larger capital investment.

Meanwhile our investment manager, Investors Diversified Services, has materially strengthened its staff and substantially improved its facilities for originating and supervising investments in the particular fields served by our Company. It continues to render the type of exceptional services for our Company that are so essential to our sound growth and the future development of Investors Syndicate of America.

The pages immediately following contain a detailed review of the activities of the Company and descriptions of the more important phases of our operations and services.

E. E. Crabb

PRESIDENT

Record of Progre

A GLANCE at the 1949 record of Investors Syndicate of America shows GROWTH — in capital letters. Each year since the Company was founded in 1940, the number of our certificates in force has increased, assets have climbed steadily higher, our organization has expanded, we have served a larger number of customers and invested more dollars in the growth and well-being of America. The charts on the facing page are graphic illustrations of this continuing Investors Syndicate of America trend.

Looking at last year's facts and figures, we see that 26,766 new certificates were issued during 1949 with a total maturity value of $143,855,693 and an average size of $5,375. This compares with 30,347 new certificates in 1948 having a maturity value of $167,731,250 and an average size of $5,527. Total assets on December 31, 1949 were $129,202,370, an increase of 26.08 per cent over the same date in 1948. Maturity value of certificates outstanding at the 1949 year-end was $687,769,203, an increase of 13.10 per cent over the year before.

These funds, the security behind your certificates, were constructively invested in many phases of American enterprise under the direction of Investors Diversified Services, our Company's investment manager. This organization's experienced staff is currently employed in the management of more than half a billion dollars of security and mortgage investments.

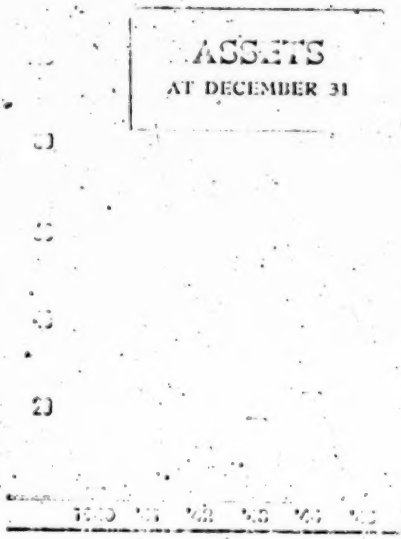
Because of the ever-increasing demands for its services and the widening scope of its activities, Investors Diversified Services continued to expand its facilities during 1949. The year before it formed an Economic Research Council to make comprehensive reports on economic data and forecasts of future trends. In 1949 I.D.S. further expanded its Research and Analysis Division.

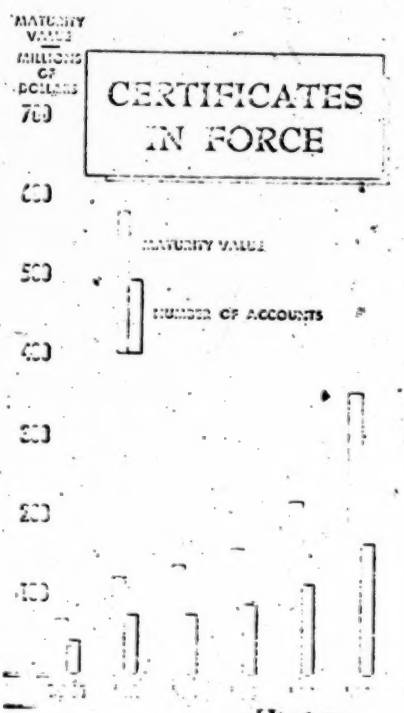
Before an investment is made, this division conducts an exhaustive study of the property or company under consideration. If it has to do with a corporate investment, the study will cover the entire industry group to which that corporation belongs. It is also the job of the business analysts and statisticians to maintain continuing studies of these investments after they have been made. These are days of rapidly shifting economic and political conditions; making the best of research and analysis a "must" for investors. I.D.S. has therefore regarded the enlargement of its research staff and the broadening of its analytical facilities as an important safeguard for the future.

STEADY GROWTH

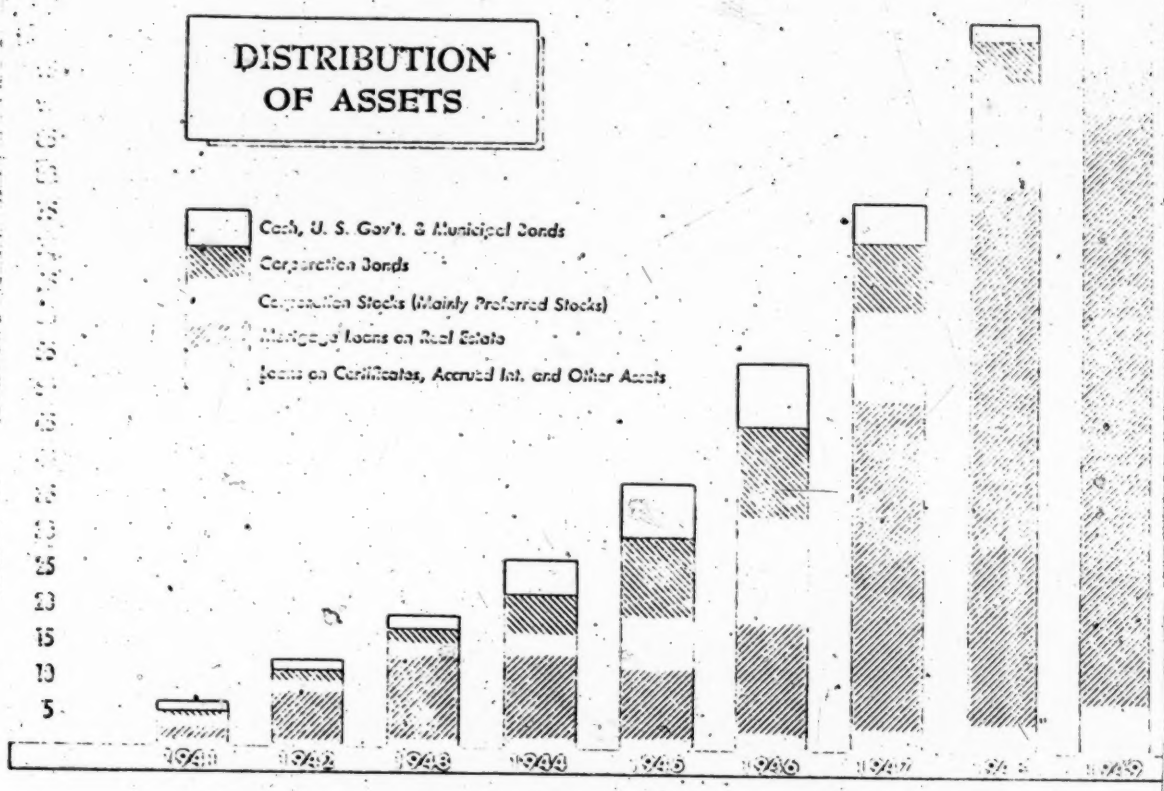
These charts show the growth of Investors Syndicate of America over the past ten years. In 1940, when our Company was organized, assets were less than $2,000,000. That was a small start compared with 1949's total assets of almost $130,000,000. But each of the intervening years showed both steady progress and consistent growth.

The lower chart, illustrating the number and maturity value of Investors Syndicate of America certificates in force, tells a similar story of success. In 1941, the first full year of our operations, there were slightly more than 21,500 holders of Investors Syndicate of America certificates. Climbing steadily through the years they totaled more than 143,000 on December 31, 1949. Measured in maturity value dollars they jumped from around $68 million to $687 million at the year end. An interesting sidelight to these figures is the fact that the average maturity value of the certificates grew in increasing proportion. Both number of certificates and maturity value set new high records at the close of 1948. At the close of 1949 those records were broken again.





[fol. 3020]



IN 1949 INVESTORS SYNDICATE OF AMERICA'S operations more nearly approached the pattern of pre-war years in that a substantial portion of our assets, as illustrated in the chart on this page, were invested in mortgages on real estate. By so doing, we were making an outstanding contribution to America's serious need for medium priced and low priced housing. I.S.A. made new mortgage loans during the year on 3,922 individual dwelling units and on 155 multiple dwelling units and apartments. This compares with loans on 4,589 individual units and 130 multiple units in 1948.

The money paid on the Company's certificates was also put to work serving America in other ways. As the 1949 bar in the accompanying chart shows, some of this money was invested in stocks (mainly preferred stocks) of business enterprises to provide them with funds to buy equipment, increase their working capital, improve their factories or generally expand their

3020

INVESTMENTS

Money at Work

operations. Some was loaned to them for similar purposes by the purchase of their bonds. These companies employ hundreds of thousands of people and provide many kinds of goods and services for us all. A part of the funds were invested in U. S. Government, state and municipal bonds; and an adequate amount was put aside for cash reserves.

FINANCING OF HOUSING

At the end of 1949 Investors Syndicate of America had 71 per cent of its assets invested in mortgage loans, representing an investment of $91,468,556 with an average of $6,668. These totals compare with 75 per cent at the end of 1948 for a total of $75,900,129 invested in mortgage loans averaging $7,060. Most of the loans in both years were F.H.A insured or guaranteed by the Veterans Administration.

The Company's management believes these large percentages of assets invested in mortgages on city properties are sound and desirable for Investors Syndicate of America. This type of investment provides for amortization of payments, which results in a declining risk for us as payments are made over a period of years. Such loans help to provide the needed low cost homes and, at the same time, assure a good return on the Company's investment.

The selection and servicing of these mortgages is supervised on a contractual basis by the mortgage division of Investors Diversified Services. This organization works closely with architects and builders in the planning of new and better low cost homes and multiple dwelling houses. Hence, both the buyer, and we as the mortgage holder, benefit by this relationship. Some idea of our contribution to better housing for America can be obtained from the pictures on pages 8 and 9.

FINANCING OF INDUSTRY

Our investments in various industries represented by corporate securities amounted to $24,300,605 at December 31, 1949, or about 19 per cent of total assets. This compares with $20,631,233 at the end of 1948, or approximately 20 per cent of that year's assets.

At December 31, 1949, 31 per cent of the portfolio was invested in bonds and preferred stocks of railroads, 29 per cent in those of public utilities and 40 per cent in similar securities of industrial companies. These percentages in 1948 were 24 per cent for railroads, 32 per cent for utilities and 44 per cent for industrials.

[fol. 3022]

MANAGEMENT

THE SUCCESS of Investors Syndicate of America depends not only upon the services it offers its certificate holders but also upon the skilful management of its funds. Our officers and directors are responsible for the policy governing the investment of these dollars. Augmenting their efforts, through our contract with Investors Diversified Services, is one of the most experienced and efficient investment organizations in the country.

This company's extensive facilities include 17 mortgage loan offices strategically located across the country, which study local conditions, supervise and service loans and suggest future policy. Its Economic Research Council, composed of ten recognized independent authorities, studies basic economic conditions and makes general recommendations as to trends. Its top consultants and research men are backed by 54 years of broad experience in the investment and mortgage field. The organizational chart on the facing page shows how these men with varied backgrounds work together as a single investment team.

I.D.S. for instance, will finance a construction loan on a major new housing development where a prior commitment has been made by the Federal Housing Administration or the Veterans Administration for such mortgage insurance and guarantees as are available under applicable Federal laws. As the homes are completed and sold such of the resulting F.H.A. or V.A. insured or guaranteed mortgages as are required for our Company are purchased from I.D.S. with the balance going to savings banks, insurance companies, Federal National Mortgage Association and other institutional buyers. Through this process, I.S.A. secures geographical diversification and sound investments in the form of home mortgages backed by the guarantees provided by governmental legislation.

I.D.S. currently manages security investments of about $276,400,000 and services mortgage loans totaling about $443,200,000. Thus it can offer our Company services and facilities that we could not maintain ourselves except at great cost and possibly at considerable sacrifice of the efficiencies and know-how available under its large and highly successful operations. For the same reason, each of the 143,115 certificate holders of Investors Syndicate of America has available to him investment management that none of us as individuals could possibly afford.

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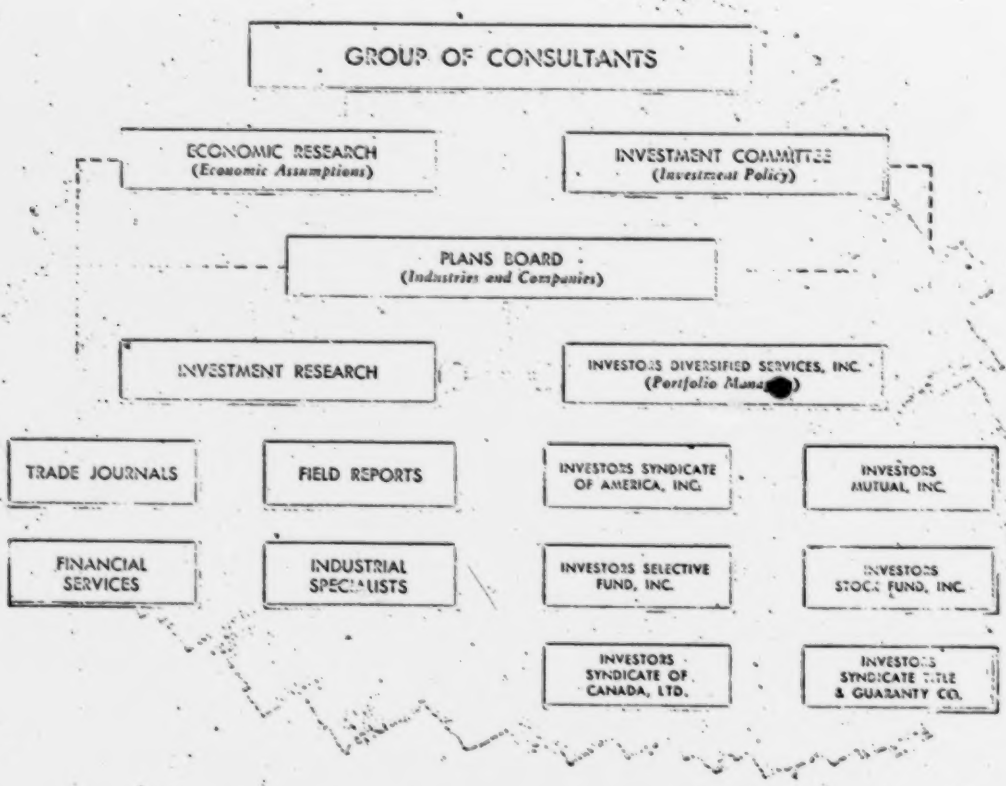
[fol. 3023]

and Supervisory Activities



INVESTMENT SUPERVISION This is the organization chart of our portfolio managers, Investors Diversified Services, Inc. Their staff of top economists, real estate mortgage specialists and security analysts constantly study and recommend investments for the funds of Investors Syndicate of America.

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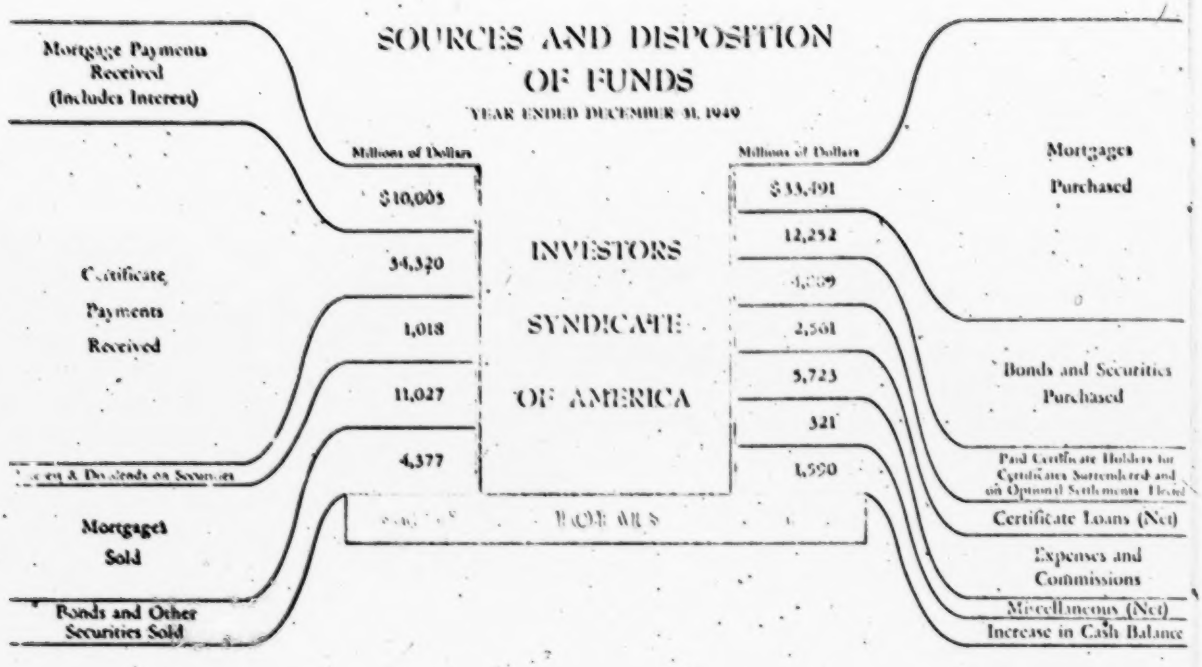
[fol. 3024]



THIS IS a graphic illustration of how Investors Syndicate of America works—how it works for you as certificate holders and how it contributes to the well-being of America. This chart shows that 60 million dollars plus flowed into the Company during 1949 and that this money was put to useful work, serving the American people and business in general. The largest item appearing in gross receipts (reducing everything to round numbers) was 34 million dollars received from individuals who are currently investing in our certificates. Other sources of income were payments on mortgages outstanding, proceeds from the sale of mortgages to others and from the sale of bonds and securities. This reservoir of funds received did not remain idle. As these funds accumulated, the Company put more than $33 million to work financing much needed new homes. Another $12 million was loaned to or invested in a number of leading industrial companies. Other funds were used in performing the daily operations of our business, including the payment of operating expenses. This is the Investors Syndicate of America operation. And these are dollars in action.

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Accountants' Report

GEORGE ROSSETTER & CO.
Certified Public Accountants

To the Board of Directors and
Security Holders of Investors Syndicate of America, Inc.

We have examined the balance sheet of Investors Syndicate of America, Inc., as of December 31, 1949 and 1948, and the related statement of net income and earned surplus for the years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Cash, securities, mortgages and other loans were independently verified by us by obtaining certifications from depositaries as to cash on deposit and securities held in safekeeping, by inspection of documents on hand; by securing direct confirmations from the custodians as to investments deposited with a trust company, or with states or their depositaries pursuant to statutes or agreements; and by confirmation of items in transit. We also received confirmation of account balances from certain mortgagors and other borrowers. The records of liabilities to certificate holders and reserves maintained in connection therewith were examined and in our opinion, the amounts thereof meet the requirements of the provisions of the Investment Company Act of 1940 and provisions of the certificates.

In our opinion, the accompanying balance sheet and the statement of net income and earned surplus, including the notes and schedule thereto, fairly present the financial position of Investors Syndicate of America, Inc., at December 31, 1949 and 1948, and the results of its operations for the years then ended, in conformity with generally accepted accounting principles, applied on a consistent basis.

GEORGE ROSSETTER & CO.

Minneapolis,
February 21, 1950

[fol. 3026]

Balance Sheet

INVESTORS SYNDICATE

Assets (Note 1)

	December 31	
	1949	1948
Qualified Assets (Note 1-B):		
Cash		
On deposit with banks (less special accounts of $632,733.42 for 1949 and $101,240.66 for 1948, covering deposits for taxes and insurance on mortgages) — unrestricted	$ 120,564.35	368,319.79
On deposit with Central Depositary	1,519,132.33	
Total cash	$ 1,639,696.68	368,319.79
Cash in transit from parent company — collection agent — representing collections for last few days of December of cash were deposited in January	$ 333,263.72	352,639.91
Securities (Note 2):		
	Market Value	
	1949	1948
Bonds at amortized cost:		
United States Government direct obligations	$ 4,929,850.20	$ 736,120.00 $ 5,913,951.10 $ 761,200.63
Other	9,254,328.75	7,021,139.25 9,498,080.36 7,189,243.32
Preferred stocks — at average cost	13,380,161.63	11,264,973.39 14,506,889.77 12,819,216.94
Common stocks — at average cost	477,781.25	173,913.00 490,920.63 184,752.89
Total securities	$28,042,121.83	$19,316,167.64 $ 29,411,821.73 21,385,622.73
Mortgages on real estate — principal balances:		
First mortgages:		
Insured by Federal Housing Administration		$ 26,132,431.14 $ 20,933,831.98
Partially guaranteed under Servicemen's Readjustment Act of 1944, as amended		41,188,779.03 35,176,924.20
Other first mortgages		21,731,797.38 18,495,634.54
Second mortgages fully guaranteed under Servicemen's Readjustment Act of 1944, as amended		2,395,548.52 1,271,737.97
Total mortgages on real estate		$ 91,468,556.07 $ 75,960,129.19
Other qualified assets:		
Certificate loans — secured by cash surrender values		$ 4,268,607.27 $ 2,632,307.29
Accrued interest and dividends receivable on investments		503,977.01 403,753.09
Due from brokers for securities sold but not delivered		20,329.17
Accounts receivable		10,206.74 22.23
Total other qualified assets		$ 4,782,791.02 $ 3,056,411.78
Total qualified assets		$127,841,435.65 $101,277,922.53
Other Assets:		
Investment in corporate bonds — at amortized cost (market value — 1949, $179,550.00; 1948, $146,300.00)		184,602.97 [illegible]
Accrued interest		475.00 [illegible]
Unamortized premiums on mortgages (Notes 1 and 5)		[illegible],176,856.43 1,01[illegible]
Total		$129,202,370.05 $102,479,[illegible]

DECEMBER 31, 1949 and 1948

OF AMERICA, INC.

Liabilities

	December 31	
	1949	*1948*
RESERVES FOR WHICH QUALIFIED ASSETS ARE REQUIRED TO BE MAINTAINED (Note 1):		
Installment certificates:		
Reserves to mature	$100,129,410.12	$ 76,[illegible]
Advance payments	12,085,672.36	11,035,152.07
Additional credits allowed	811,793.68	776,274.99
Reserve for death and disability refund options	321,396.54	271,976.60
Reserve for reconversion of paid up certificates	10,626.38	5,226.19
Fully paid certificates—reserves to mature	11,241,399.65	9,357,421.15
Due to unlocated certificate holders	2,273.37	2,250.53
Total reserves for which qualified assets are required to be maintained	$124,633,793.17	$ 98,137,814.06
OTHER LIABILITIES:		
Due to brokers for securities purchased but not received		$ 123,246.36
Due to parent company:		
Underwriting fees	$ 420,672.47	436,242.66
Other	92,668.77	115,157.91
Undistributed cash collections from certificate holders	48,894.78	41,817.55
Unearned interest on loans	55,627.42	22,180.61
Accrued taxes	90,031.91	62,052.25
Accrued underwriting fees	36,771.85	37,262.—
Other accrued expenses	2,669.21	15,363.25
Sundry accounts payable	12,270.23	7,055.67
Total other liabilities	$ 758,976.64	$ 881,376.86
RESERVE FOR ADDITIONAL CREDITS—To be allowed on installment certificates attaining anniversaries in following year, (Note 4)	$ 118,715.96	$ 91,481.43
DEFERRED CREDIT—portion of net initial loading credits to be applied to future operations—per accompanying statement (Note 5)	$ 329,309.28	$ 313,447.53
CAPITAL STOCK AND SURPLUS:		
Capital stock, $5.00 par — authorized 300,000 shares; issued and outstanding, 150,000 shares	$ 750,000.00	$ 750,000.00
Surplus:		
Paid-in—representing the excess of the proceeds of sale of capital stock in 1940 over the par value thereof	252,500.00	252,500.00
Earned—per accompanying statement (Note 4)	2,343,575.00	[illegible]
Total capital stock and surplus	$ 3,346,075.00	$ [illegible]
Total	$129,202,370.05	$102,[illegible]

[fol. 3028]

Statement of Net Incom

FOR THE YEARS END

INVESTORS SYNDICAT

	Year Ended December 31	
	1949	1948
GROSS INCOME:		
Interest income:		
On mortgages (less amortization of premiums, 1949, $178,419.47; 1948, $117,730.69—Note 3)	$3,064,730.80	$2,473,727.53
On bonds	400,823.76	298,060.71
Sundry—principally on certificate loans	179,887.63	103,549.78
Cash dividends on stocks	601,315.37	444,485.63
Service fees on certificate installments paid more frequently than once a year	556,865.96	478,965.49
Net loading credits (Note 5):		
Portion of net initial loading applicable to current year—per accompanying statement	28,440.25	24,347.66
Loading (other than initial loading) collected, less underwriting fees of $948,520.73 for 1949, and $678,130.34 for 1948, applicable thereto and paid or payable to parent company	73,013.76	82,004.60
Other income	6,982.62	4,428.91
Total gross income	$4,912,060.15	$3,909,570.31
COSTS AND EXPENSES:		
Provision for certificate reserves and additional credits:		
Installment certificates:		
Provision for reserves to mature	$2,681,203.75	$2,016,990.71
Interest on advance payments	229,296.08	200,779.04
Provision for additional credits (Note 4)	204,264.33	155,217.23
Interest on additional credits	20,950.95	17,520.43
Provision for death and disability refund options—portion	32,397.86	21,699.76
Fully paid certificates—provision for reserves to mature	263,162.55	209,309.36
Total	$3,431,275.52	$2,621,516.53
Less reserve recoveries from surrenders	437,757.19	268,235.81
Provision for certificate reserves—net	$2,993,518.33	$2,353,280.72
Other costs and expenses:		
Amounts paid or payable to parent company:		
Certificate collection fees	$ 113,881.05	$ 95,641.20
Mortgage service fees	394,536.73	311,517.34
Investment management fees	141,212.21	107,098.47
Other services (Note 7)	455,069.27	399,946.91
Provision for underwriting fees on Single Payment Certificates	35,656.27	30,648.73
Taxes (other than income) and license fees	6,968.55	6,033.40
Depositary fees	35,250.00	30,653.43
Directors' fees	16,503.34	16,687.50
Other	74,204.67	58,540.93
Total other costs and expenses	$1,273,282.09	$1,056,767.91
Total costs and expenses	$4,266,800.42	$3,410,048.63
OPERATING INCOME—Forward	$ 645,259.73	$ 499,521.68

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and Earned Surplus

DECEMBER 31, 1949 and 1948

O.F · AMERICA, INC.

	Year Ended December 31	
	1949	1948
OPERATING INCOME—Forward	$ 645,259.73	$ 499,521.68
INCOME CREDITS—Overprovision for interest on income taxes	12,863.25	
INCOME BEFORE PROFIT ON INVESTMENT TRANSACTIONS	$ 658,122.98	$ 499,521.68
PROFIT (LOSS) ON INVESTMENT TRANSACTIONS:		
Securities (Note 8)	$ 67,244.87	$(127,988.83)
Mortgages (1949 after cred... for refund of unamortized premiums of $104,218.29 by parent company—Note 3)	Nil	(3,523.32)
Real estate	2,987.56	102.00
Total profit (loss) on investment transactions	$ 70,232.43	$(131,410.15)
INCOME BEFORE PROVISION FOR INCOME TAXES	$ 728,355.41	$ 368,111.53
PROVISION FOR INCOME TAXES:		
Current year:		
Federal income taxes	$ 83,000.00	$ 1,032.30
State income taxes	2,611.13	3,241.75
Total	$ 85,611.13	$ 4,274.05
Less portion of Federal income taxes applicable to net initial loading credits deferred (Note 9 B)	8,482.60	
Remainder—charged to income	$ 77,128.53	$ 4,274.05
Overprovision for prior years' Federal income taxes	$ 55,133.66	
Less portion applicable to net initial loading credits deferred (Note 9 B)	46,719.42	
Remainder—credited to income	$ 8,414.24	
Provision for income taxes—net	$ 68,714.29	$ 4,274.05
NET INCOME FOR THE YEAR	$ 659,641.12	$ 363,837.48
CREDIT FOR REVERSAL OF APPROPRIATION FOR RESERVE FOR LOSS ON LIQUIDATION OF SECURITIES		74,958.23
EARNED SURPLUS AT BEGINNING OF THE YEAR	1,688,933.88	1,250,138.12
EARNED SURPLUS AT END OF THE YEAR (Note 4)	$2,348,575.00	$ 1,688,933.88

	Year Ended December 31	
	1949	1948
Unrealized depreciation of securities (representing the excess of book value over market value) (Note 2):		
At beginning of the year	$2,106,585.34	$ 2,342,929.07
At end of the year	1,377,162.88	2,106,585.34
Decrease in unrealized depreciation for the year	$ 729,422.46	$ 236,343.73

[fol. 3030]

PORTION OF NET INITIAL LOADING CREDITS TO BE APPLIED TO FUTURE OPERATIONS FOR THE YEARS ENDED DECEMBER 31, 1949 and 1948

INVESTORS SYNDICATE OF AMERICA, INC.

	Year Ended December 31	
	1949	1948
GROSS CREDITS FROM INITIAL LOADING	$3,640,439.96	$4,084,985.68
UNDERWRITING AND ISSUANCE COSTS (Applicable to initial loading credits):		
Underwriting fees paid or payable to parent company	$3,488,335.04	$3,909,709.12
Clerical services—portion—paid or payable to parent company (Note 7)	32,128.99	32,994.09
Printing	4,997.18	4,343.59
Federal stamp tax	2,246.59	2,985.24
Provision for death and disability refund options—portion	69,707.36	78,045.58
Total underwriting and issuance costs	$3,597,415.16	$4,028,077.62
Remainder	$ 43,024.80	$ 56,908.06
Portion of Federal income taxes applicable to net initial loading credits (Note 9B)	8,482.60	
NET INITIAL LOADING CREDITS	$ 34,542.20	$ 56,908.06

NOTE: The amount of the above excess has been treated as deferred income to be apportioned over the lives of the certificates (see Note 5). The following is a summary of the transactions in the deferred loading accounts for the two years ended December 31, 1949:

	Total	Year Ended December 31		Balance December 31
		1949	1948	1947
Balance, December 31, 1947, and excess of initial loading credits over underwriting and issuance costs for the two years ended December 31, 1949, as above	$372,337.39	$34,542.20	$56,908.06	$280,887.13
Adjustments applicable to prior years:				
Over accrual of Federal income taxes—credit	46,719.42			46,719.42
Increase in provision for death and disability refund options (debit)	(36,459.62)			(36,459.62)
Total	$382,597.19	$34,542.20	$56,908.06	$291,146.93
Portion credited to income:				
Year ended December 31, 1948	$ 24,347.66		$ 538.29	$ 23,809.37
Year ended December 31, 1949	28,440.25	$ 103.89	3,582.05	24,754.31
Total	$ 52,787.91	$ 103.89	$ 4,120.34	$ 48,563.68
Remainder—portion to be applied to future operations	$329,809.28	$34,438.31	$52,787.72	$242,583.25

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Notes to Financial Statements

INVESTORS SYNDICATE OF AMERICA, INC.

DECEMBER 31, 1949

1. DEPOSITS OF ASSETS, AND ASSET MAINTENANCE REQUIREMENTS

A. Pursuant to provisions of the certificates and to requirements of various states, assets of the Company were deposited at December 31, 1949, as follows:

Deposits to meet certificate liability requirements:	
States	$ 21,375,992.14
Central Depositary	100,184,635.84
Deposits with states to meet licensing requirements	204,496.87
Total	$121,765,124.85

The assets deposited consisted of cash of $1,519,432.55; securities having a book value of $29,414,824.74, and mortgages with unpaid principal balances of $90,830,867.56.

B. Under the provisions of its certificates and the Investment Company Act of 1940, the Company was required to have qualified assets, including certificate loans, at December 31, 1949, in the amount of $124,883,793.17.

For purposes of detetrmining compliance with the foregoing provisions, qualified assets are to be valued in accordance with such provisions of the Code of the District of Columbia as are applicable to life insurance companies. Qualified assets for which no provisions for valuation is made in such Code are to be valued in accordance with such rules, regulations, or orders as the Securities and Exchange Commission shall prescribe. Under the provisions of the aforementioned Code, all bonds or other evidences of debt having a fixed term and rate, if amply secured and if not in default as to principal and interest, are to be valued at amortized cost. The Securities and Exchange Commission has issued a rule providing for valuation of mortgages guaranteed in whole or in part under the Servicemen's Readjustment Act of 1944, as amended, at the unpaid balances thereof. No other rules for valuation had been prescribed at December 31, 1949, under the provisions of the Code or by the Securities and Exchange Commission.

In determining the value of its qualified assets, the Company has followed the rules of valuation prescribed, where applicable. Bonds have been valued at amortized cost. Mortgages owned by the Company have a fixed term and rate. However, most of the mortgages are subject to prepayment at any time and a question has arisen as to whether or not the valuation provision of the Code is applicable thereto. Pending settlement of this question, mortgages have been valued at the unpaid balances thereof and the unamortized premiums (which aggregated $1,176,456.43 at December 31, 1949) have been excluded from "qualified assets". No basis for valuation of stocks had been prescribed under the provisions of the Code or by the Securities and Exchange Commission, and such assets have been included as "qualified assets" on the basis of average cost.

Conventional first mortgages on real estate worth at least 40% more than the amount loaned thereon are qualified for investment under provisions of the Company's certificates. In most instances, appraisals made by appraisers regularly employed by Investors Diversified Services, Inc. (parent company) were used for purposes of ascertaining that such mortgages held by the Company met this requirement.

Based upon the foregoing, at December 31, 1949, the Company had qualified assets, including accrued interest and dividends receivable thereon valued at $127,841,435.65. If investments in stocks were valued at market instead of average cost, the qualified assets would aggregate $126,701,571.31.

2. BOOK VALUE AND MARKET VALUE OF SECURITIES

Securities are carried on the books on the following basis:

Bonds are carried at amortized cost, on a "first-in, first-out" basis.

Stocks are carried at average cost of individual issues.

The market values of listed and active securities are based upon closing published market quotations at December 31, 1949. The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices at December 31, 1949, except that in the absence of available quotations, six issues were priced at their cost of $1,797,000.00, which in the opinion of the Board of Directors was equivalent to fair market value.

The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1949, were fully income producing and none was in default.

3. PREMIUMS ON MORTGAGES

All mortgages owned were acquired by the Company from Investors Diversified Services, Inc. (parent company) at a premium.

Premiums on mortgages are being written off over a period of ten years. Unamortized premiums applicable to mortgages paid prior to maturity are charged to expense at the time of such prepayments. The unamortized premiums applicable to mortgages sold are added to cost in determining profit or loss on sales.

[fol. 3032]

During 1949, the Company sold mortgages having a book value of $11,195,891.11 (represented by principal balances of $11,040,550.99 and unamortized premiums applicable thereto of $155,341.12) for $11,091,672.82. Investors Diversified Services, Inc. refunded $104,218.29 to the Company (representing the excess of the unamortized premiums over the amount of premiums received on the sales) so that the Company realized a net yield on the mortgages for the period held at the rate at which purchased.

4. DIVIDEND RESTRICTION

In accordance with the terms of the various series of installment certificates, no cash dividends shall be distributed to stockholders of the Company during any calendar year if additional credits are not determined upon by the Board of Directors in an amount equal to at least ½ of 1% of the surrender value of each installment certificate at anniversaries within such calendar year. Additional credits have been determined upon for the calendar years 1948, 1949, and 1950, at the approximate rate of ¼ of 1% of the surrender values attained or to be attained at anniversaries in those years. Since the rates determined upon for those years are less than ½ of 1%, no cash dividends may be distributed to stockholders during those years.

The Company follows the practice of making provision for additional credits to be allowed at next attained anniversaries based upon the progress which installment certificates have made towards completion of current certificate years.

5. NET INITIAL LOADING CREDITS

Net initial loading credits are taken into income over the terms of the certificates on a straight line basis, with allowance for estimated extension of maturity dates due to delays in making payments, but without acceleration for terminations before maturity. See an accompanying statement for computation. After payment of underwriting fees, the resulting net credits from loading, other than initial loading, are applicable to Series One certificates, sale of which was discontinued in 1945. The period over which the Company receives a net loading on Series One certificates extends over a period of fourteen certificate years. Due to the substantial even distribution of such net loading credits over the terms of the certificates, they are taken into income as collected.

6. CONTINGENT LIABILITY

On April 27, 1949, Alleghany Corporation, a Maryland Corporation, purchased the controlling shares of Investors Diversified Services, Inc. (parent company and underwriter and investment manager for the Company) from Mr. Bertin C. Gamble, who was at that time a director of the Company. In making sales of the Company's face amount certificates from April 28 to May 23, 1949, inclusive, a prospectus was used which did not contain information as to such change in control. Approximately $612,000.00 was paid in to December 31, 1949, on certificates sold during this period. With respect to such sales the Company may or may not be liable to purchasers under Section 12 of the Securities Act of 1933, but it does not admit any such liability.

7. CHARGES MADE BY PARENT COMPANY FOR SERVICES

Investors Diversified Services, Inc. has charged the Company $487,198.26 for 1949 and $432,941.00 for 1948, for the use of facilities and personnel not required to be furnished under the underwriting, investment management, mortgage service, certificate collection, and mortgage purchase agreements, upon bases of cost allocation contemplated to contain no element of profit or loss to either Company.

8. PURCHASES AND SALES OF SECURITIES

During the years ended December 31, 1949 and 1948, purchases of securities, other than direct obligations of the United States Government, aggregated $6,000,447.49 and $5,919,963.55, respectively, and sales of such securities aggregated $2,317,314.19 and $7,017,633.11, respectively. The basis used for determining gains and losses on sales of securities is the amortized cost of bonds ("first-in, first-out" basis) and the average cost of individual issues of stocks.

9. FEDERAL INCOME TAXES

A. Under provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated Federal income tax return with its parent. This election has been exercised, and the provisions for Federal income taxes have been made on that basis. If unconsolidated Federal income tax returns were filed, the Federal income tax for the years 1949 and 1948 would be approximately $88,500.00, and $106,000.00, respectively, as compared with the provisions of $83,000.00, and $1,032.30, respectively, on a consolidated tax basis. The Bureau of Internal Revenue has not completed examination of Federal income tax returns for the years subsequent to 1945, and the taxes for those years have not been finally determined. Provisions for Federal income taxes are believed to be adequate.

B. In accordance with an interpretation by the Bureau of Internal Revenue that the net gain from initial loading may not be deferred for Federal income tax purposes, provision has been made in the accompanying statements for Federal income taxes thereon and such provision has been charged against the deferred initial loading accounts.

10. GROSS RATES OF RETURN ON INVESTMENTS

The average gross rates of return realized by the Company on its investments for the years ended December 31, 1949 and 1948, based upon the average book values of the investments, including unamortized premiums on mortgages, and less unearned interest on mortgages, and less unearned interest on certificate loans, were as follows:

	Year Ended December 31	
	1949	1948
Securities	3.52%	3.47%
Mortgages	3.81	3.84
Certificate Loans	5.13	5.32
Combined Average	3.78%	3.78%

3032

IN THE UNITED STATES DISTRICT COURT
DEFENDANT KIRBY EXHIBIT NO. K-365

ANNUAL REPORT TO CERTIFICATE HOLDERS FOR THE YEAR ENDED DECEMBER 31, 1950

Investors Syndicate of America, Inc.

[fol. 3034]

INVESTORS SYNDICATE OF AMERICA, INC.

Executive Offices: ROANOKE BUILDING, MINNEAPOLIS, MINNESOTA

Board of Directors

E. E. CRABB, *Chairman of the Board*
4523 Drexel Avenue
Minneapolis, Minn.

JOHN W. BARTON
2719 Humboldt Avenue South
Minneapolis, Minn.

V. C. JENSEN
520 Cleveland Ave.
Fergus Falls, Minnesota

ROSS S. MARSHALL
20776 Brantley Road
Shaker Heights, Ohio

ROBERT W. PURCELL
3600 Terminal Tower Bldg.
Cleveland, Ohio

GUY H. RAMSEY
4520 Sunset Ridge
Minneapolis, Minn.

D. E. RYAN
4501 E. Lake Harriet Boulevard
Minneapolis, Minn.

ECKLEY P. SCHOOLEY
300 North State Street
Dover, Delaware

GEORGE M. STEWART
18 Park Lane
Minneapolis, Minn.

Principal Officers

E. E. CRABB, 4523 Drexel Avenue, Minneapolis, Minn. ..... *President*
HAROLD K. BRADFORD, 57 Groveland Terrace, Minneapolis, Minn. ..... *Vice President*
HARVEY C. CARR, 3328 Blaisdell Avenue, Minneapolis, Minn. ..... *Vice President*
GRADY CLARE, 3548 Irving Avenue South, Minneapolis, Minn. ..... *Vice President*
C. DONALD MCGUIGGAN, 4526 Bruce Avenue, Minneapolis, Minn. ..... *Vice President*
CLYDE J. MOORE, 4510 Wooddale Avenue, Minneapolis, Minn. ..... *Vice President*
JAMES R. RIDGWAY, SR., 2212 Newton Avenue South, Minneapolis, Minn. ..... *Vice President*
NORMAN B. WAAG, 4608 Lakeview Drive, Minneapolis, Minn. ..... *Vice President and Controller*
JAMES B. RACEY, 3835 Brookview Drive, St. Louis Park, Minn. ..... *Treasurer*
ROBERT W. PETERSON, 2112 St. Anthony Boulevard, Minneapolis, Minn. ..... *Secretary*
T. L. KENEALY, 4519 Bryant Avenue South, Minneapolis, Minn. ..... *Auditor*

Independent Public Accountants: Peat, Marwick, Mitchell & Co., 70 Pine Street, New York, N. Y.

Central Depositary: Marquette National Bank, Minneapolis, Minnesota

Principal Underwriter and Investment Manager: Investors Diversified Services, Inc., Roanoke Building, Minneapolis, Minnesota

This statement is not to be considered an offer of sale or solicitation of an offer to buy any securities. It has been prepared for existing security holders of the Company and while it otherwise must be preceded by or accompanied with the current Prospectus.

There is no sales charge to the investor included in the payments required under the terms of the certificates issued by Investors Syndicate of America, Inc. For details thereof and other material information see the Prospectus.

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[fol. 3035]

March 30, 1951

To the Certificate Holders:

In 1950 Investors Syndicate of America, Inc., completed its first decade of operations. Moreover, in spite of the international crisis that confronted the nation in mid-year and which still exists, our Company continued its growth, both in total assets and in actual number of certificate holders like yourself.

Because of this increase, our Company was able to enlarge its contribution to the nation's economy. As a certificate holder, you may be interested in reviewing how this was accomplished.

The mechanics of putting your dollars to work for the general good through I.S.A. are, in essence at least, simple, and they are equally effective. As you know, you determine on your objective and purchase a certificate in an amount calculated to help you reach that objective; then by systematic payments you complete your plan. But we could not give you these results within the indicated time, whatever it may be, if the dollars with which you buy these certificates lay idle; your money must "earn its keep."

These dollars are put to work, principally in helping finance America's homes and in corporate business. And it is important to note here that as you continue to seek your own true independence in the only way that men and women in general have ever succeeded in attaining it—by the practice of thrift—to that extent can companies like ours help in keeping the kind of country we all want to live in. Therefore the progress of the Company financially has a double significance to you, the certificate purchaser.

Progress

A few figures will show the extent to which our Company made progress last year. The 29,347 new certificates issued totaled about 10% more than the corresponding figure for 1949. The maturity value of these certificates was $161,658,630, more than 12% greater than in the year previous, indicating that more people have reset their sights upward. And one of the most interesting developments was that 28.7% of the new certificates issued were acquired with related "self-completion insurance," close to

3053

[fol. 3036]

AT YEAR END

	1950	1949
Total Assets	$158,365,892	$129,202,370
Number of Certificates Outstanding	161,608	143,115
Maturity Value of Certificates Outstanding	$783,132,504	$687,769,203

FOR THE YEAR

Increase in Assets	$ 29,163,522	$ 26,726,816
Number of New Certificates Issued	29,347	26,766
Maturity Value of Certificates Issued	$161,658,630	$143,855,695

Sources and Disposition of Funds *Year Ending December 31, 1950*

The chart above indicates both the source and disposition of all the funds received during the year—involving over $93 million. Please note especially that mortgage purchases totaled $64,819,000—more than double the amount of the year before.

3036

half again as many as in the previous year. This insurance, it should be noted, is not an activity of I.S.A.; it is made available through life insurance companies in order to provide for the completion of the certificate payments.

With these gains added to the continuing payments of previous certificate holders, total assets of I.S.A. rose to a new high, standing at $158,365,892 at the year's end. This figure compares with $129,202,370 at the close of 1949. Equally striking, the maturity value of outstanding certificates rose to $783,132,504; at the end of the previous year it was $687,769,203.

Large as these gains are, however, they should be considered in the light of the number of I.S.A. accounts such as your own. At the end of 1950, the total was 161,608. This means that the average maturity value of all certificates was $4,846.

How the Money Was Invested

Perhaps the greatest domestic need of the United States in the post-World War II period has been for housing. In spite of the fact that the value of home construction broke all records last year, the need has been only partially relieved since new families have run a close race with the increase in facilities to house them.

I.S.A. has always invested substantially in real estate mortgages; last year it invested an even higher proportion of its funds in such loans than in the year before. At the close of 1950, about 80% of its assets were invested in mortgage loans, against 71% in 1949. In dollars, this means that $126,259,279 was invested in such mortgages, as compared with $91,468,556 at the end of 1949.

These bare figures do not tell the story of the security behind these loans. Not only are these mortgages well diversified geographically, with the advantage of expert selection and supervision, but some 44% of the mortgages were insured by the Federal Housing Administration, while 33% carry the guarantees of the Veterans' Administration. The significance of these loans from the standpoint of America's expanding economy is great.

[fol. 3038]

The national trend toward decentralization is of tremendous importance, both in peace and in the semi-defense economy in which we now live. This trend is national—that is, away from concentration of industry in one area. At least equally important, it is also municipal, which means the creation of whole communities around existing cities.

It is therefore necessary to provide housing on a vast scale, not only to meet increases in the population but to meet shifting population trends. So we can truly say that housing is as much a part of America's economic plant as are the factories, shops and offices in which we work.

The foregoing paragraphs summarized the outstanding results during 1950. Those interested in more complete financial data for the year will find it in the Income Statement and Balance Sheet in this report.

The Outlook

As you know, the investment manager of I.S.A. is Investors Diversified Services, Inc. One of the divisions of I.D.S. is exclusively concerned with the origination, development and supervision of real estate mortgages; another with the selection and administration of outstanding corporate and government securities; a third is devoted to private placements, that is, the purchase of corporate issues directly from the issuer. An appreciation of the capabilities of all these departments of I.D.S. is necessary to understand our Company's current prospects in the light of the present national and international situation.

In all probability, present building and credit restrictions will reduce the number of new mortgages generally available in 1951. But this does not mean that I.S.A. will not be able to obtain enough to meet its investment needs, for several reasons.

In the first place, the mortgage division of Investors Diversified Services has the facilities to create far more mortgages than can be absorbed by I.S.A. Thus there could be a sharp shrinkage in the number of such mortgages, and yet leave an ample amount

2260
[fol. 3039]

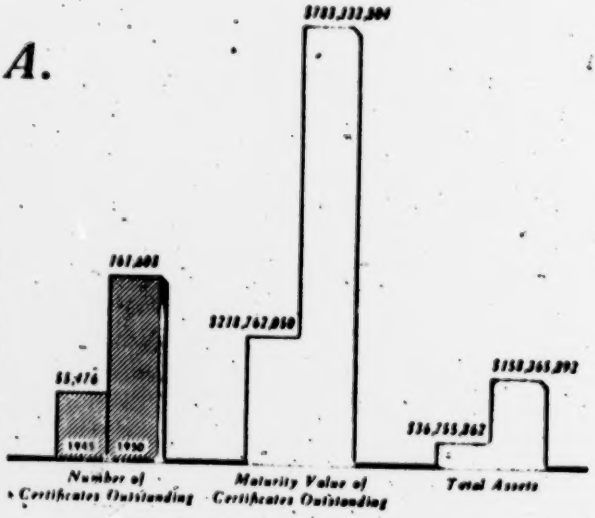
Progress of I.S.A.

This chart shows the progress of I.S.A. at the end of its first five years of operations compared with that at the end of the second five years.

At the end of the earlier period, there was a total of 88,476 certificates outstanding; in the second five years, almost twice this number were added.

Total maturity value outstanding makes an even more interesting comparison. On December 31, 1945, the maturity value of certificates outstanding was about $218 million; today it is about $783 million, indicating that the maturity value of the certificates outstanding at the end of 1950 was more than three and a half times larger than at the end of 1945.

Finally, the total assets of I.S.A. were about $36 million at the end of the first half of the decade; they were well over four times that amount at the end of the period.

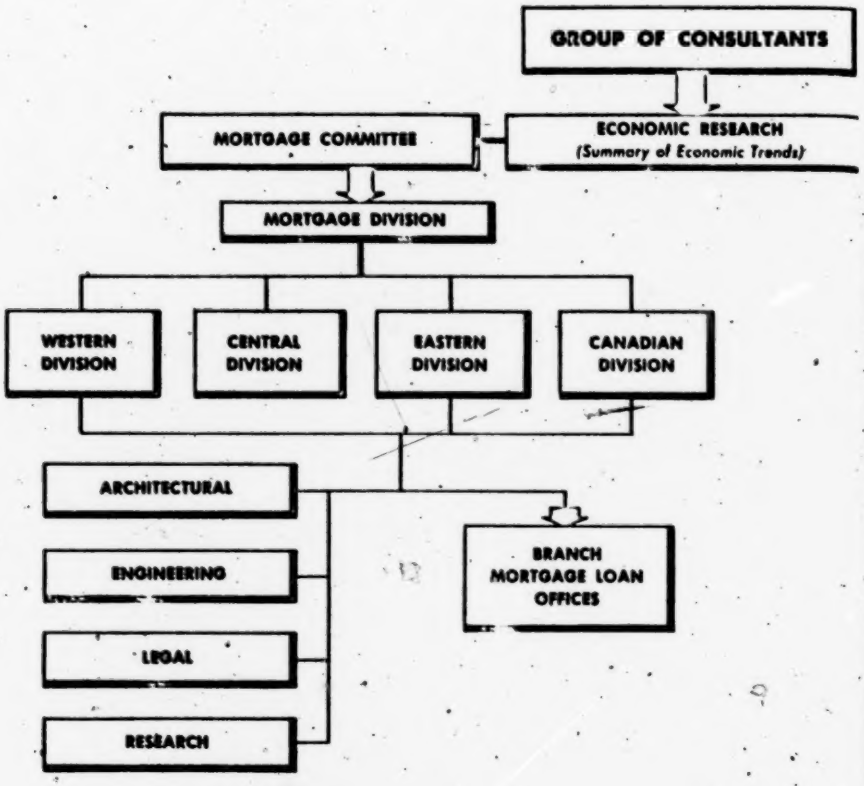


for this Company's investment purposes. As a further offsetting factor, it is likely that there will be a considerable amount of defense housing even if the limitations on private building are maintained and even tightened.

Further, the trend toward decentralization referred to earlier in this message has brought in its train a need for new business centers; "downtown" is moving to the suburbs. These are not merely "shopping centers," rather they are buildings pre-planned for numerous commercial, professional, recreational and civic purposes. We expect that I.S.A. will actively foster these needed developments in the future by acquiring mortgages on business center properties, for which government authorization for completion has been obtained.

In regard to other investments, it is expected that the investment department of Investors Diversified Services, which was further enlarged and strengthened during 1950,

[fol. 3040]



INVESTMENT SUPERVISION This is the organization chart of our portfolio managers, Investors Diversified Services, Inc. Few organizations have the resources required to warrant and to use so many safeguards to protect investments in both mortgages and corporation securities.

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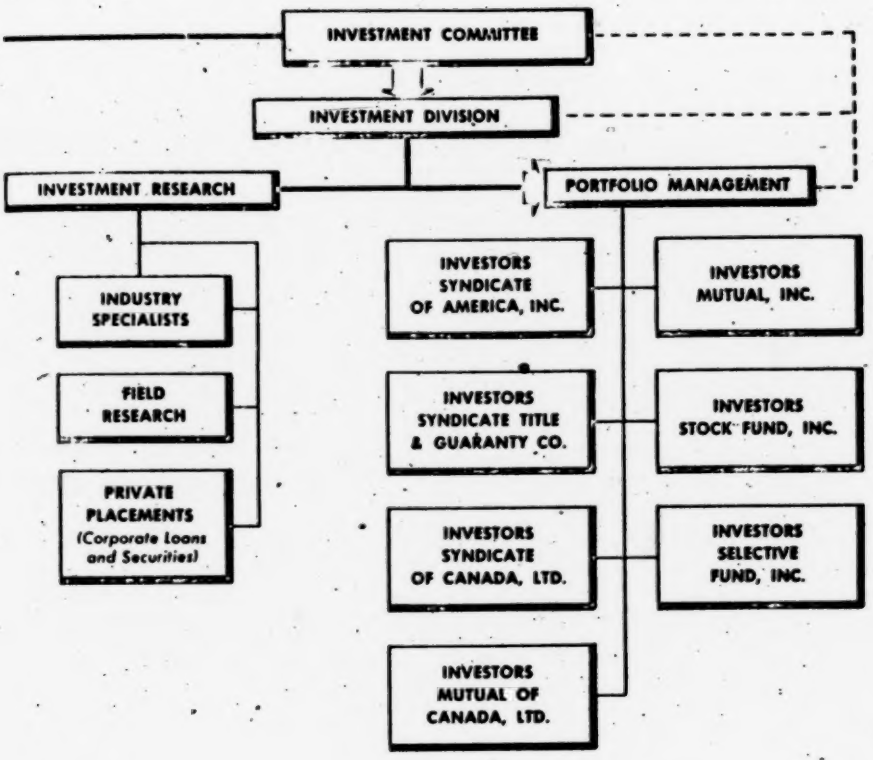
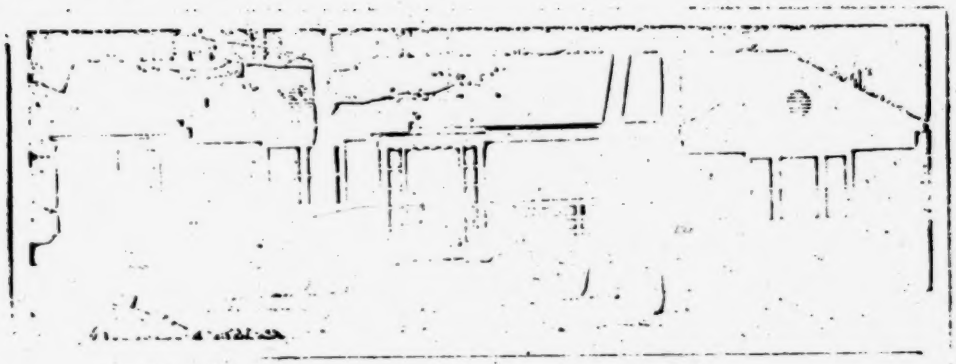

INVESTMENT COMMITTEE
INVESTMENT DIVISION
INVESTMENT RESEARCH
PORTFOLIO MANAGEMENT
INDUSTRY SPECIALISTS
FIELD RESEARCH
PRIVATE PLACEMENTS (Corporate Loans and Securities)
INVESTORS SYNDICATE OF AMERICA, INC.
INVESTORS SYNDICATE TITLE & GUARANTY CO.
INVESTORS SYNDICATE OF CANADA, LTD.
INVESTORS MUTUAL OF CANADA, LTD.
INVESTORS MUTUAL, INC.
INVESTORS STOCK FUND, INC.
INVESTORS SELECTIVE FUND, INC.



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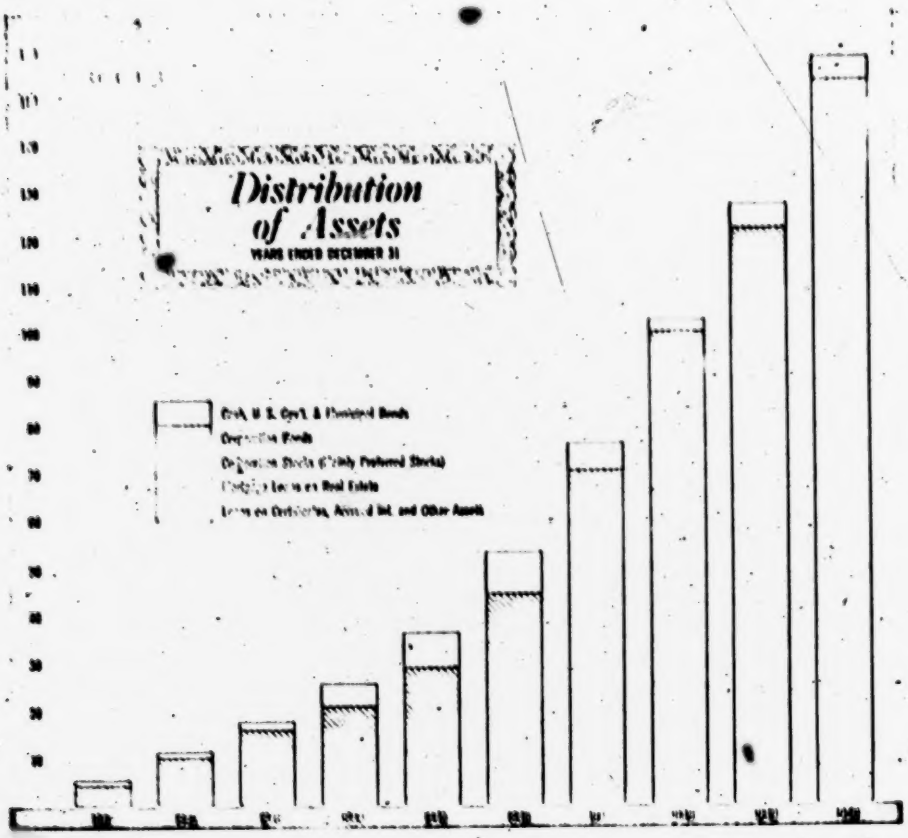


will find the problems of investing in a semi defense economy as possible of solution in 1951 as was the case in 1950. This is equally true of the private placement division, through which securities worth about $3,400,000 have been placed in the current I.S.A. portfolio.

Inflation and You

Before concluding this message, it is important to say a few words about a subject that affects us all, and which you in turn can affect. That is inflation.

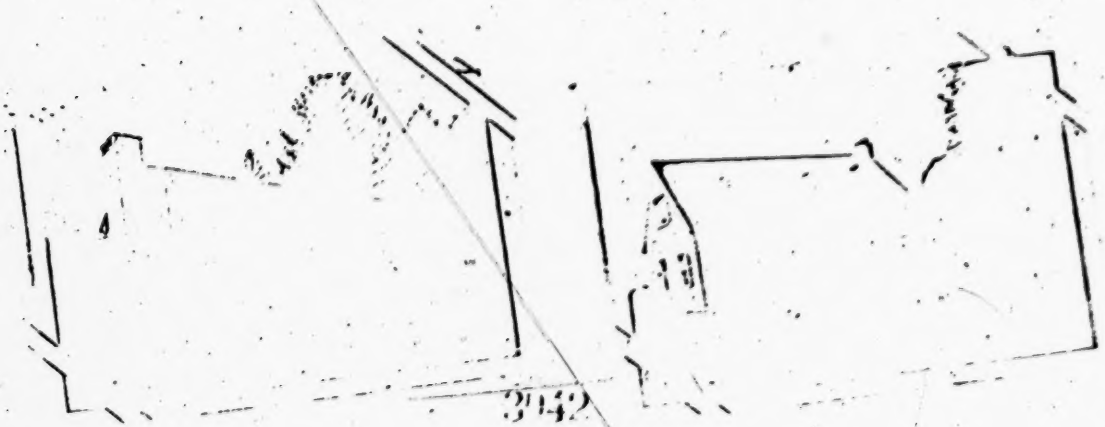
We know that prices have risen generally over the past ten years, we *do not know* what will happen in the next ten or twenty. But whatever happens, the purchaser of face amount certificates will have bought therein with "average" dollars; that is, the purchasing power of the dollars he has used to buy his certificate will be about average for the period of accumulation. Moreover, if the investor chooses the optional settlement providing for term installment payments, he will receive average dollars for that period as well.

Further, the buyer of face amount certificates, and indeed everyone who does not spend all he makes now, is by just that much reducing the pressure of buying demand the real cause of rising prices of consumer goods.

There is one more way in which you can help yourself by fighting inflation. Waste in local, state or national government—dollars tossed into a marketplace already badly distorted in favor of the seller—is of course always undesirable; right now its evil effect is intensified. You can help yourself and the country by using our democratic processes in whatever ways are open to you to help make your governmental bodies practice what you practice—thrift.

E. E. Crabb

PRESIDENT.



[fol. 3043]

Balance Sheet, Decemb

INVESTORS SYNDICAT

Assets (Note 1 A)

	December 31 1950	December 31 1949
QUALIFIED ASSETS (Note 1 B):		
On deposit with banks (less special accounts of $1,035,056.44 for 1950 and $632,733.42 for 1949, covering deposits for taxes and insurance on mortgages)—Unrestricted	$ 302,448.78	$ 120,565.55
On deposit with Central Depositary	2,625,752.48	1,519,432.55
	$ 2,928,201.26	$ 1,639,998.10
Collections received by parent company—collection agent—during last few days in December of each year—remitted in January	$ 453,339.89	$ 535,265.72
Securities (Notes 2 and 3):		

	Market Value 1950	Market Value 1949		
Bonds at amortized cost:				
United States Government —direct obligations	$ 457,505.40	$ 4,929,840.20	$ 460,472.40	$ 4,918,034.16
Other	2,849,753.75	9,254,328.75	2,866,440.30	9,498,980.36
Preferred stocks—at average cost	12,005,077.00	13,380,164.63	12,553,989.15	14,506,889.77
Common stocks—at average cost	4,706,143.75	477,781.25	4,799,673.20	490,920.45
	$20,018,479.90	$28,042,114.83	$ 20,680,575.05	$ 29,414,824.74
Mortgages on real estate—principal balances (Notes 3 and 4):				
First mortgages:				
Insured by Federal Housing Administration			$ 55,525,337.42	$ 26,152,431.14
Partially guaranteed under Servicemen's Readjustment Act of 1944, as amended			37,215,044.11	41,188,779.03
Other first mortgages			29,544,948.02	21,731,797.38
Second mortgages fully guaranteed under Servicemen's Readjustment Act of 1944, as amended			3,973,949.05	2,395,548.52
			$126,259,278.60	$ 91,468,556.07
Other qualified assets:				
Unamortized premiums on mortgages (Note 4)			$ 1,371,036.89	$ 1,176,456.43
Certificate loans—secured by cash surrender values (Note 3)			5,823,042.55	4,268,607.27
Accrued interest, dividends receivable, due from brokers, etc.			757,849.89	503,977.01
			$ 7,951,929.33	$ 5,949,040.71
Total qualified assets			$158,273,324.13	$129,007,685.34
OTHER ASSETS:				
Investment in corporate bonds at amortized cost plus accrued interest (market value $180,025.00)				184,477.97
Accounts receivable			92,567.46	10,206.74
TOTAL			$158,365,891.59	$129,202,370.05

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[fol. 3043a]

31, 1950 and 1949

OF AMERICA, INC.

Liabilities

	December 31 1950	1949
CERTIFICATE RESERVES (Note 5):		
Installment certificates:		
Reserves to mature	$125,557,470.85	$100,129,440.19
Advance payments	12,898,090.54	12,083,672.36
Additional credits allowed	1,037,818.79	844,793.68
Accrual for additional credits to be allowed (Note 6)	150,142.70	118,715.96
Reserve for death and disability refund options	373,157.75	321,596.54
Reserve for reconversion of paid up certificates	10,692.93	10,626.38
Fully paid certificates—reserves to mature	13,143,236.10	11,241,390.65
Due to unlocated certificate holders	3,497.53	2,273.37
	$153,174,107.19	$124,752,509.13
CURRENT LIABILITIES, EXCLUSIVE OF CERTIFICATE LIABILITIES:		
Due to brokers for securities purchased but not received	$ 136,671.73	
Due to parent company	606,204.81	$ 513,281.24
Undistributed cash collections from certificate holders	78,169.56	48,894.78
Unearned interest on loans	70,272.41	55,627.42
Accrued taxes	78,665.16	90,031.91
Other	94,587.61	51,141.29
	$ 1,064,571.28	$ 758,976.64
DEFERRED CREDIT—portion of net initial loading credits to be applied to future operations—per accompanying statement (Note 7)	$ 341,568.25	$ 329,809.28
CAPITAL STOCK AND SURPLUS:		
Capital stock, $5.00 par—authorized 300,000 shares; issued and outstanding, 150,000 shares	$ 750,000.00	$ 750,000.00
Surplus:		
Paid in—representing the excess of the proceeds of sale of capital stock in 1940 over the par value thereof	262,500.00	262,500.00
Earned—per accompanying statement (Notes 6 and 8)	2,773,144.87	2,348,575.00
	$ 3,785,644.87	$ 3,361,075.00
TOTAL	$158,365,891.59	$129,202,370.05

See accompanying notes to financial statements.

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Statement of Net Income

For the Years Ended December

INVESTORS SYNDICATE

	Year Ended December 31	
	1950	1949
INCOME FROM INVESTMENTS, SERVICE FEES, AND LOADING:		
Interest income:		
On mortgages (less amortization of premiums, 1950, $236,456.30; 1949, $178,419.47—Note 4)	$4,585,579.30	$3,064,730.80
On bonds	232,125.07	400,823.76
Sundry—principally on certificate loans	253,176.13	179,887.63
Cash dividends on stocks	535,077.44	601,315.37
Service fees on certificate installments paid more frequently than once a year (Note 9)	638,735.78	556,865.96
Net loading credits (Notes 7 and 9):		
Portion of net initial loading applicable to current year—per accompanying statement	30,630.91	28,440.25
Loading (other than initial loading) collected (Note 7) less underwriting fees of $1,143,385.89 for 1950 and $948,520.73 for 1949, applicable thereto and paid or payable to parent company (Note 10)	68,051.12	73,013.76
Other	11,650.42	6,982.62
	$6,355,026.17	$4,912,060.15
EXPENSES APPLICABLE TO INVESTMENTS AND SERVICING OF CERTIFICATES:		
Amounts paid or payable to parent company (Note 10):		
Certificate collection fees	$ 132,296.10	$ 113,881.05
Mortgage service fees	562,357.92	394,536.73
Investment management fees	96,110.86	141,212.21
Underwriting fees on Single Payment Certificates	38,645.10	35,656.27
Other services	542,976.07	455,069.27
Taxes (other than income) and license fees	9,512.53	6,968.55
Depositary fees	43,497.43	35,250.00
Directors' fees	17,291.67	16,503.34
Other	125,537.16	74,204.67
	$1,568,224.84	$1,273,282.09
Net Investment, Servicing, and Loading Income	$4,786,801.33	$3,638,778.06
PROVISION FOR CERTIFICATE RESERVES AND ADDITIONAL CREDITS (Note 5):		
Installment certificates:		
Provision for reserves to mature	$3,410,830.82	$2,681,203.75
Interest on advance payments	248,243.66	229,296.08
Provision for additional credits (Note 6)	261,514.61	204,264.33
Interest on additional credits	25,363.56	20,950.95
Provision for death and disability refund options—portion	31,691.02	32,397.86
Fully paid certificates—provision for reserves to mature	314,341.62	263,162.55
	$4,291,985.29	$3,431,275.52
Less reserve recoveries from surrenders	554,275.92	437,757.19
	$3,737,709.37	$2,993,518.33
OPERATING INCOME—Forward	$1,049,091.96	$ 645,259.73

and Earned Surplus

31, 1950 and 1949

OF AMERICA, INC.

	Year Ended December 31	
	1950	1949
OPERATING INCOME—Forward	$1,049,091.96	$ 645,259.73
Other Income		12,863.25
INCOME BEFORE PROFIT ON INVESTMENT TRANSACTIONS	$1,049,091.96	$ 658,122.98
PROFIT (LOSS) ON INVESTMENT TRANSACTIONS (Note 11):		
Securities	$(330,874.91)	$ 67,244.87
Mortgages (after credit for refund of unamortized premiums by parent company, 1950, $69,457.72; 1949, $104,218.29 Note 4)	3,364.78	
Real estate		2,987.56
Total profit (loss) on investment transactions	$(327,510.13)	$ 70,232.43
INCOME BEFORE PROVISION FOR INCOME TAXES AND SPECIAL CHARGES	$ 721,581.83	$ 728,355.41
PROVISION FOR INCOME TAXES:		
Federal normal and surtax (Note 12) (after reductions for overprovision for prior years—1950, $46,488.04; 1949, $55,133.66)	$ 23,511.96	$ 27,866.34
State income taxes	2,500.00	2,611.13
TOTAL	$ 26,011.96	$ 30,477.47
INCOME BEFORE SPECIAL CHARGES	$ 695,569.87	$ 697,877.94
SPECIAL CHARGES:		
Additional amortization of mortgage premiums equal to reduction in Federal income taxes (Note 4)	271,000.00	
Reduction of net initial loading credits taken into income (Note 7) due to overprovision for prior years' taxes — less $8,482.60 credit for current year		38,236.82
NET INCOME FOR THE YEAR	$ 424,569.87	$ 659,641.12
EARNED SURPLUS AT BEGINNING OF THE YEAR	2,348,575.00	1,688,933.88
EARNED SURPLUS AT END OF THE YEAR	$2,773,144.87	$2,348,575.00

	Year Ended December 31	
	1950	1949
Unrealized depreciation of securities (representing the excess of book value over market value) (Note 2):		
At beginning of the year	$1,377,162.88	$2,106,585.34
At end of the year	662,095.15	1,377,162.88
Decrease in unrealized depreciation for the year	$ 715,067.73	$ 729,422.46

See accompanying notes to financial statements

PORTION OF NET INITIAL LOADING CREDITS TO BE APPLIED TO FUTURE OPERATIONS FOR THE YEARS ENDED DECEMBER 31, 1950 and 1949

INVESTORS SYNDICATE OF AMERICA, INC.

	Year Ended December 31 1950	1949
GROSS CREDITS FROM INITIAL LOADING	$3,889,781.56	$3,640,439.96
UNDERWRITING AND ISSUANCE COSTS (Applicable to initial loading credits):		
Underwriting fees paid or payable to parent company (Note 10)	$3,729,793.99	$3,488,335.04
Clerical services—portion—paid or payable to parent company (Note 10)	32,429.27	32,128.99
Printing	8,313.61	4,997.18
Federal stamp tax	2,347.40	2,246.59
Provision for death and disability refund options—portion	74,507.41	69,707.36
Total underwriting and issuance costs	$3,847,391.68	$3,597,415.16
Net initial loading credits	$ 42,389.88	$ 43,024.80

NOTE: The amount of the above excess has been treated as deferred income to be apportioned over the lives of the certificates (see Note 7). The following is a summary of the transactions in the deferred loading accounts for the two years ended December 31, 1950.

	Total	Year Ended December 31 1950	1949	Balance December 31 1948
Balance December 31, 1948, and excess of initial loading credits over underwriting and issuance costs for the two years ended December 31, 1950, as above	$398,862.21	$42,389.88	$43,024.80	$313,447.53
Adjustments made in 1949 applicable to prior years:				
Reduction in amount taken into income in prior years equal to overprovision for Federal income taxes on portion deferred	46,719.42			46,719.42
Increase in provision for death and disability refund options (debit)	(36,459.62)			(36,459.62)
Total	$409,122.01	$42,389.88	$43,024.80	$323,707.33
Portion credited to income:				
Credited to loading income:				
Year ended December 31, 1949	$ 28,440.25		$ 103.89	$ 28,336.36
Year ended December 31, 1950	30,630.91	$ 211.67	2,082.88	28,336.36
Special credit equal to Federal income taxes applicable to portion deferred (Note 7)	8,482.60		8,482.60	
Total	$ 67,553.76	$ 211.67	$10,669.37	$ 56,672.72
Remainder — portion to be applied to future operations	$341,568.25	$42,178.21	$32,355.43	$267,034.61

See accompanying notes to financial statements.

Notes to Financial Statements, December 31, 1950

INVESTORS SYNDICATE OF AMERICA, INC.

1. Deposits of Assets and Maintenance of Qualified Assets.

A. Pursuant to provisions of the certificates and to requirements of various states, assets of the Company were deposited at December 31, 1950, as follows:

	Deposits	Required Deposits	Excess
Deposits to meet certificate liability requirements:			
States	$ 36,670,457.53	$ 25,957,854.82	$ 712,602.71
Central Depository—Marquette National Bank, Minneapolis	122,263,830.54	121,233,067.13	1,029,863.41
Total	$158,934,288.07	$147,190,921.95	$1,730,366.12
Deposits with states to meet licensing requirements	205,196.54	205,196.54	
Total	$159,139,484.61	$147,396,118.48	$1,730,366.12

The assets deposited consisted of cash in the amount of $2,625,752.48, securities having a book value of $20,543,933.46, mortgages with unpaid principal balances of $125,813,311.25, and $156,487.42 due from a broker for securities sold but not delivered. Loans on certificates are deductible in computing certificate liability deposit requirements. Such loans aggregated $5,823,042.55 at December 31, 1950.

B. Under the provisions of its certificates and the Investment Company Act of 1940, at December 31, 1950, the Company was required to have qualified assets (as that term is defined in Section 28 (b) of that Act), including loans on certificates, in the amount of $153,273,964.49. As shown in the accompanying balance sheet, at December 31, 1950, the Company had qualified assets of $158,273,324.13.

For purposes of determining compliance with the foregoing provisions, qualified assets are to be valued in accordance with such provisions of the Code of the District of Columbia as are applicable to life insurance companies. Qualified assets for which no provision for valuation is made in such Code are to be valued in accordance with such rules, regulations, or orders as the Securities and Exchange Commission shall prescribe.

Conventional first mortgages on real estate worth at least 40% more than the amount loaned thereon are qualified for investment under provisions of the Company's certificates. In most instances, appraisals made by appraisers regularly employed by Investors Diversified Services, Inc. (parent company) were used for purposes of ascertaining that such mortgages held by the Company met this requirement.

2. Book Value and Market Value of Securities.

Bonds are carried at amortized cost, on a "first-in, first-out" basis. Stocks are carried at average cost of individual issues. The Company does not adjust the carrying value of individual securities to market except in instances where the securities are in default or are not fully income producing. All securities owned at December 31, 1950 were fully income producing and none were in default.

The market values of listed and active securities are based upon published closing market quotations.

The market values of unlisted and inactive securities are based upon the mean between quoted bid and asked prices, except that in the absence of available quotations, eight issues held at December 31, 1950 were priced at their cost of $3,764,200, which in the opinion of the Board of Directors was equivalent to fair market value.

3. Gross Rates of Return on Investments.

The average gross rates of return realized by the Company on its investments for the years ended December 31, 1950 and 1949, based upon the average book values of the investments, including unamortized premiums on mortgages, were as follows:

	Year Ended December 31	
	1950	1949
Securities	5.99%	3.52%
Mortgages	3.98	3.81
Certificate loans	5.03	5.13
Combined average	4.02%	3.78%

4. Mortgages and Premiums Paid Thereon.

The aggregate principal balances of mortgages of the self-amortizing type held at December 31, 1950, was $104,892,772.91.

The principal balances of mortgages in respect of which principal or interest payments were past due for more than three months at December 31, 1950, was $1,459,407.95 (including $452,101.24 in process of foreclosure). All such delinquent mortgages were insured by the Federal Housing Administration or were partially guaranteed under the Servicemen's Readjustment Act of 1944, as amended, except for balances of $116,575.80.

All mortgages owned at December 31, 1950 were acquired from Investors Diversified Services, Inc. (parent company). All transactions involving the purchases were within the provisions of Securities and Exchange Commission orders exempting from the provisions of the Investment Company Act of 1940 those inter-company mortgage transactions which meet the conditions of the orders. Investors Diversified Services, Inc. may charge a premium of not to exceed 1½% of the principal amount of the mortgage at date of sale, or of the amount of that company's investment therein if acquired at a discount, whichever is the lesser amount. The premium was established to permit Investors Diversified Services, Inc. to realize a sufficient amount from the sale of the mortgages to cover the costs of acquiring same, and the parent company may realize a profit thereon.

Premiums on mortgages are being amortized over a period of ten years. On a consolidated tax basis (see Note 12) premiums on mortgages are taken as deductions as paid. In 1950, the amortization was accelerated in the amount of $271,000.00, equal to the approximate reduction in Federal income taxes resulting from the increase in the amount of the deduction for tax purposes over the deduction on the book basis. Of this amount, $201,000.00 applied to 1950, and $70,000.00 to prior years.

Unamortized premiums applicable to mortgages paid prior to maturity are charged to expense at the time of such prepayments. The unamortized premiums applicable to mortgages sold are added to cost in determining profit or loss on sales. During 1949 and 1950 the Company sold mortgages at less than book values, including unamortized premiums. Investors Diversified Services, Inc. refunded $104,218.29 in 1949 and $69,457.72 in 1950, to the Company (representing the excess of the unamortized premiums over the amount of premiums received on the sales) so that the Company realized a net yield on the mortgages for the period held at the rate at which purchased.

5. Certificate Reserves.

Reserves maintained in respect of outstanding certificates have been computed in accordance with the provisions of the certificates and Section 28 of the Investment Company Act of 1940. The gross rates of interest or accumulation on certificate reserves at December 31, 1950, were as follows:

Notes to Financial Statements (CONTINUED)

	Total Reserves December 31 1950	Annual Gross Rates of Interest or Accumulation (a)
Installment certificates:		
Reserves to mature—by series:		
One	$57,156,463.45	3½%
6, 7, 8, and 9	17,528,246.78	3
10 and 11	2,562,089.21	3½
12, 13, 14, 15, and 20	48,310,671.41	3½
Advance payments and accrued interest—all series	12,898,090.54	2
Additional credits allowed and accrued interest—by series:		
One	821,608.52	3
6 to 15, inclusive, and 20	216,210.27	2½
Accrual for additional credits to be allowed	150,142.70	(Note 6)
Reserve for death and disability refund options	373,157.75	(b)
Reserve for reconversion of paid-up certificates	10,692.93	(c)
Fully paid certificates:		
Paid-up—by series:		
One	2,302,481.98	3½
6, 7, 8, and 9	346,638.36	3
10 and 11	289,355.01	3½
12, 13, 14, 15, and 20	1,380,835.72	3½
Optional settlement certificates:		
From Series One installment certificates	720,259.72	3
From other installment and single payment certificates	1,184,260.30	2½
Single payment certificates:		
First five years	6,440,283.11	2½ (d)
Thereafter	479,121.90	2½
Accounts payable to unlocated certificate holders	3,497.53	Nil
Total	$153,174,107.19	

(a) The gross rates of accumulation on reserves to mature installment certificates and on additional credits allowed thereon are reduced by delays in making specified payments as there is no accumulation required during such periods of delay. The series numbers assigned to installment certificates represent years to maturity from date of issuance if payments are made when due, except for Series One which is a fifteen year certificate. At the option of certificate holders the maturity date on Series One, 15 and 20 certificates may be extended one to fifteen certificate years, one to four certificate years, and one to ten certificate years, respectively. During such periods of extension, the reserve rate of accumulation is 3% on Series One and 2½% on Series 15 and 20.

(b) The reserve for death and disability refunds is based upon estimates of future costs to be incurred upon exercise of the option. The provision is charged partly to income and partly to initial loading credits based upon the loading credits taken up in those sections.

(c) The reserve for reconversion of paid up certificates is based upon current analyses of costs.

(d) Except for the initial fee, no loading is provided for payment of underwriting fees on Single Payment Certificates. These fees are payable over a period of five years from dates of issuance of the certificates. The underwriter's fee plus the reserve accumulation results in the equivalent of a gross annual cost of 2½% for the first five years.

6. DIVIDEND RESTRICTION AND ADDITIONAL CREDITS.

In accordance with the terms of the various series of installment certificates, no cash dividends shall be distributed to stockholders of the Company during any calendar year if additional credits are not determined upon by the Board of Directors in an amount equal to at least ½ of 1% of the surrender value of each installment certificate at anniversaries within such calendar year. Additional credits have been determined upon for the calendar years 1949, 1950, and 1951, at the approximate rates of ¼ of 1% of the surrender values attained or to be attained at anniversaries in those years. Since the rates determined upon for those years are less than ½ of 1%, the dividend restriction is presently operative through 1951. The granting of additional credits for the year 1950 at a rate necessary to remove the restriction would have increased expenses by approximately $230,000.00. Additional credits to be allowed at next attained anniversaries are accrued on the basis of the progress which certificates have made towards new anniversaries.

7. NET INITIAL LOADING CREDITS.

Net initial loading credits are taken into income over the terms of the certificates on a straight line basis, with allowance for estimated extension of maturity dates due to delays in making payments, but without acceleration for terminations before maturity. See the accompanying statement for computation. In accordance with an interpretation by the Bureau of Internal Revenue that the net credits from initial loading may not be deferred for Federal income tax purposes, provision has been made in the accompanying statements for Federal income taxes thereon. In years prior to 1950 credits to income were accelerated in amounts equal to the Federal income tax applicable to the portion deferred for the year. If this practice had been continued, income for 1950 would have been increased by approximately $5,000.00.

After provision for underwriting fees, the resulting net credits from loading, other than initial loading, are applicable to Series One certificates, sale of which was discontinued in 1945. The period over which the Company receives a net loading on Series One certificates extends over a period of fourteen certificate years. Due to the substantial even distribution of such net loading credits over the terms of the certificates, they are taken into income as collected.

8. CONTINGENT LIABILITY.

On April 27, 1949, Allegheny Corporation, a Maryland Corporation, purchased the controlling shares of Investors Diversified Services, Inc. (parent company and the Company's underwriter and investment manager). In making sales of the Company's investment certificates from April 28, to May 23, 1949, inclusive, a prospectus was used which did not contain information as to such change in control. Approximately $1,065,000.00 was paid in to December 31, 1950 on certificates sold during this period. With respect to such sales the Company may or may not be liable to purchasers under Section 12 of the Securities Act of 1933, but it does not admit any such liability.

9. CHARGES MADE ON INSTALLMENT PAYMENTS ON LESS THAN ANNUAL BASIS.

An additional charge is collected on certificate installment payments which are made on less than an annual basis. A portion of such charge is credited to reserves to mature and the balance is taken into income. The portion credited to reserves to mature is equal to the amount necessary to place the applicable reserve on a basis which together with the balance of reserve payments to be made during the remaining term of the certificate year, will, at the stipulated reserve increment rate, accumulate the required reserve at the end of the certificate year.

10. MANAGEMENT AND SERVICE FEES.

The bases of computing management and service fees paid or payable to Investors Diversified Services, Inc. (parent company) during the two years ended December 31, 1950, were as follows:

CERTIFICATE COLLECTION FEE:

Fifteen cents per item of collection, except that no fees are

payable on payments received at time of acceptance of applications.

MORTGAGE SERVICE FEE:

One twenty-fourth of one percent of the principal balances of serviced loans on the first day of each month, which is equivalent to an annual fee of one-half of one percent.

INVESTMENT MANAGEMENT FEE:

A monthly fee equal to one twenty-fourth of one percent of the average book value of securities (excluding mortgages) owned, which is equivalent to an annual fee of one-half of one percent.

UNDERWRITING FEES:

The underwriting fees payable to Investors Diversified Services, Inc. on sales of Company certificates are based upon terms of agreements giving the former the exclusive right to solicit or cause the solicitation of applications for certificates issued by the Company. The agreements provide for payment of underwriting fees over periods of years, when specified installment payments have been applied, or in the case of single payment certificates at specified times after issuance, and providing the certificate has not been surrendered at the time the respective fee is due. The aggregate fees payable under the agreements per $1,000.00 face amount of certificates, and a summary of the periods over which the fees are payable, is shown by series, as follows:

	Aggregate Fees Payable			Number of Certificate Years Over Which Subsequent Years' Fees Are Payable
	Total	First Year	Subsequent Years	
Installment certificates:				
Series One (Sale discontinued in 1945):				
To Sept. 1, 1942	$37.98	$20.88	$17.10	9
On and after Sept. 1, 1942	50.60	26.50	24.10	10
Series 6	32.40	28.50	3.90	2
Series 7	35.92	28.50	7.42	3
Series 8	39.44	28.50	10.94	4
Series 9	43.08	28.50	14.58	5
Series 10	42.30	26.50	15.80	8
Series 11	45.44	26.50	18.94	7
Series 12	47.74	26.50	21.24	7
Series 13	50.70	26.50	24.20	8
Series 14	43.68	26.50	17.18	5
Series 15	45.80	26.50	19.30	7
Series 20	51.62	18.44	33.18	19
Single payment certificates	28.06	15.20	12.86	5

FOR OTHER SERVICES:

Investors Diversified Services, Inc. has charged the Company for use of its facilities and personnel, other than those covered by fees and commissions, upon bases of cost allocation, contemplated to contain no element of profit or loss to either company. These charges, which do not include compensation for such services as are covered by specific fees, are summarized for the two years ended December 31, 1950, as follows:

	Year Ended December 31,	
	1950	1949
Executive services and expenses	$ 28,122.90	$ 22,780.95
Legal services and expenses	17,110.67	12,899.86
Clerical services and expenses	530,171.77	451,517.45
Total	$575,405.34	$487,198.26

Of the total amounts shown in the foregoing tabulation, charges for clerical services totaling $32,429.27 for 1950, and $32,128.99 for 1949 have been charged against issuance costs as shown in an accompanying statement and represent costs of issuing and delivering certificates. The remaining amounts have been charged against investment and certificate servicing income.

11. INVESTMENTS PURCHASED AND SOLD AND BASIS FOR COMPUTING PROFIT OR LOSS ON SALES.

The aggregate cost of securities and mortgages purchased and sold during the two years ended December 31, 1950, was as follows:

	1950	1949
Purchases:		
United States Government bonds	$ 3,157,093.75	$ 5,616,568.39
Other securities	6,609,437.15	5,994,497.49
Mortgages on real estate	65,268,500.83	33,653,579.01
Sales:		
United States Government bonds	$ 7,612,970.71	$ 1,453,546.12
Other securities	11,822,826.43	2,317,314.19
Mortgages on real estate	10,780,239.94	10,916,108.22

The bases used for determining gains and losses on investment transactions is the amortized cost of bonds ("first-in, first-out basis"), the average cost of individual issues of stocks, the amortized cost of mortgages, and the depreciated cost of real estate.

12. FEDERAL INCOME TAXES.

Under provisions of the Internal Revenue Code, as amended, the taxable income of the Company may be included in a consolidated Federal income tax return with its parent and that company's domestic subsidiaries. A consolidated return was filed for the year 1949, and the 1950 return will be filed on this basis.

On a consolidated tax basis, premiums on mortgages purchased by Investors Syndicate of America, Inc. from its parent company are taken as a tax deduction in the year of purchase (by elimination of the income and charge) whereas on an individual return basis the premiums would be amortized over the terms of the mortgages. In years prior to 1950, the allocation of consolidated Federal income taxes to individual companies in the group was based upon the ratio of each company's tax on an individual return basis to the aggregate taxes which would have been payable by the companies on that basis, allowing Investors Syndicate of America, Inc. a deduction for amortization of premiums on the book basis.

Beginning in 1950, for purposes of computing the allocation of the consolidated tax, a deduction was allowed to Investors Syndicate of America, Inc. for the excess of premiums paid over the premiums amortized or applicable to sales of mortgages and a retroactive adjustment was made to place the prior year allocations on the same basis. This retroactive adjustment resulted in a reduction in the taxes allocated to the Company of $46,488.04. Also, a retroactive adjustment of $70,000.00 for acceleration of mortgage premiums was made in 1950 (see Note 4). The net effect of these retroactive adjustments was a reduction in 1950 income of $23,511.96.

If unconsolidated Federal income tax returns had been filed for the years ended December 31, 1950 and 1949, after having filed consolidated returns in the preceding years in each instance, the Federal income taxes would have aggregated approximately $369,000.00 and $151,000.00, respectively as compared with adjusted provisions of $70,000.00 and $37,754.17, on a consolidated tax basis.

No Federal excess profits taxes would be payable for 1950 on either a consolidated or unconsolidated basis. The Bureau of Internal Revenue has not completed examination of Federal income tax returns for years subsequent to 1948 and the taxes for those years have not been finally determined. Provisions for income taxes are believed to be adequate.

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Report of Independent Public Accountants

PEAT, MARWICK, MITCHELL & CO.
NORTHWESTERN BANK BUILDING
MINNEAPOLIS 2, MINN.

NEW YORK
ATLANTA — MINNEAPOLIS
BALTIMORE — NEWARK
BOSTON — NEW ORLEANS
CHARLOTTE — OKLAHOMA CITY
CHICAGO — OMAHA
CINCINNATI — PHILADELPHIA
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To the Board of Directors and
Security Holders of Investors Syndicate of America, Inc.:

We have examined the balance sheet of Investors Syndicate of America, Inc., as of December 31, 1950 and the related statement of net income and earned surplus for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. We secured direct confirmation of the securities owned at December 31, 1950, from the custodians as to those on deposit and in safekeeping, and from brokers with respect to uncompleted transactions.

In our opinion, the accompanying balance sheet and the statement of net income and earned surplus, present fairly the financial position of Investors Syndicate of America, Inc., at December 31, 1950 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year except for the changes made in respect to the acceleration of amortization of mortgage premiums and the allocation of Federal income taxes referred to in the accompanying Notes 4 and 12, which changes meet with our approval.

PEAT, MARWICK, MITCHELL & Co.

Minneapolis,
February 20, 1951

[fol. 3052]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT IRELAND EXHIBIT No. I-42

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

SADIE ZENN, FREDA BLUMENTHAL, HENRY MENCHER, ABRAHAM L. FISTEL, JEANNETTE ANNENBERG, BERNARD LIEBERMAN, NICHOLAS SCHEPIS, JACOB HAIMOWITZ and FRANCES KOENIG,

Plaintiffs,

—against—

J. J. ANZALONE
FRANK B. BATEMAN
O. HENRY BRIGGS
THOMAS J. DEEGAN, JR.
WALTER W. FOSKETT
HENRY J. GUILD
ALLAN P. KIRBY
HERMAN R. NEFF
CLINT W. MURCHISON
BROOKS POTTER
R. W. PURCELL
SIDNEY W. RICHARDSON
RADCLIFFE SWINNERTON
ANDREW VAN PELT

ANITA O'KEEFFE YOUNG, as Executrix under the Last Will and Testament of ROBERT R. YOUNG, deceased,

CLINT W. MURCHISON, JR. and JOHN D. MURCHISON, individually and as partners doing business under the firm name and style of MURCHISON BROTHERS,

CHESAPEAKE INDUSTRIES, INC., NEW YORK CENTRAL RAILROAD COMPANY and ALLEGHANY CORPORATION,

Defendants.

NOTICE OF ENTRY OF JUDGMENT

SIRS:

PLEASE TAKE NOTICE that the within is a true copy o judgment duly made and entered herein in the office of Clerk of the Supreme Court, New York County, on 21st day of June, 1960.

Dated: New York, N. Y.
June 22, 1960

Yours, etc.,

CHARLES T. IRELAND, JR.
Attorney for Defendant
Alleghany Corporation
Office & P. O. Address
230 Park Avenue
New York, New York

TO:

DONOVAN LEISURE NEWTON & IRVINE
Two Wall Street
New York 5, N. Y.

[fol. 3053]
POMERANTZ, LEVY & HAUDEK, Esqs.
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New York 17, N. Y.

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New York, N. Y.

GEIST & NETTER, Esqs.
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CHARLES TRYNIN, Esq. and
IRVING STEINMAN, Esq.
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295 Madison Avenue
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ZELBY & BURSTEIN, Esqs.
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36 West 44th Street
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LORD, DAY & LORD, Esqs.
25 Broadway
New York, N. Y.

SATTERLEE, WARFIELD & STEPHENS, Esqs.
460 Park Avenue
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BARTLETT, POE & CLAGGETT, Esqs.
U. S. Fidelity & Guaranty Bldg.
Baltimore, Maryland

HARRY BIJUR, Esq.
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James L. O'Connor, Esq.
11 West 42nd Street
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New York, N. Y.

Battle, Fowler, Newman, Stokes & Kheel, Esqs.
477 Madison Avenue
New York, N. Y.

Daniel Jacobs, Esq.
111 Broadway
New York, N. Y.

Arthur Schenkein, Esq.
111 Broadway
New York, N. Y.

Chester C. Bollenbach, Esq.
427 Bloomfield Avenue
Montclair, New Jersey

[fol. 3055]

At a Special Term, Part I, of the Supreme Court of the State of New York held in the County of New York at the County Court House thereof on June 21, 1960.

Present:

HON. OWEN MCGIVERN,
Justice.

Index No. 7244/1954

SADIE ZENN, FREDA BLUMENTHAL, HENRY MENCHER, ABRAHAM L. FISTEL, JEANETTE ANNENBERG, BERNARD LIEBERMAN, NICHOLAS SCHEPIS, JACOB HAIMOWITZ and FRANCES KOENIG,

Plaintiffs,

—against—

J. J. ANZALONE
FRANK B. BATEMAN
O. HENRY BRIGGS
THOMAS J. DEEGAN, JR.
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HENRY J. GUILD
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ANITA O'KEEFFE YOUNG, as Executrix under the Last Will and Testament of ROBERT R. YOUNG, deceased,

CLINT W. MURCHISON, JR. and JOHN D. MURCHISON, individually and as partners, doing business under the firm name and style of MURCHISON BROTHERS,

CHESAPEAKE INDUSTRIES, INC., NEW YORK CENTRAL RAILROAD COMPANY and ALLEGHANY CORPORATION,

Defendants.

JUDGMENT

An Order having been made and entered herein on December 28, 1959 directing that upon the payment of $1,100,000 by defendant Allan P. Kirby to Alleghany Corporation and the fulfillment of certain other terms, a judgment be entered dismissing the action as to defendant Allan P. Kirby and severing and continuing the action as [fol. 3056] to all other defendants, and a judgment in accordance therewith having been entered on February 4, 1960; and

An Order having been made herein on December 29, 1959 directing that upon the payment of a sum of $900,000 by defendant Anita O'Keeffe Young, as Executrix of the Estate of Robert R. Young, deceased, to Alleghany Corporation and the fulfillment of certain other terms, a judgment be entered dismissing the action as to defendant Anita O'Keeffe Young, as Executrix of the Estate of Robert R. Young, deceased, and defendant Thomas J. Deegan, Jr. and severing and continuing the action as to all other defendants, and a judgment in accordance therewith having been entered on March 7, 1960; and

Said Order made herein on December 29, 1959 having also directed that upon the payment of a further sum of $1,000,000 by defendants herein to Alleghany Corporation and the fulfillment of certain other terms, a judgment be entered dismissing the action as to Clint W. Murchison, Jr. and John D. Murchison, individually and doing business as Murchison Brothers, and Clint W. Murchison, and as to John Connally, Perry Bass and Howell B. Smith, as Executors of the Estate of Sid W. Richardson (also known and referred to as Sidney W. Richardson), deceased, and severing and continuing the action as to all other defendants, and a judgment in accordance therewith having been entered on March 17, 1960; and

Defendants Allan P. Kirby and the aforesaid Executors of the Estate of Sid W. Richardson having consented to the

jurisdiction of this Court for the sole purpose of effectuating the settlement of this action in accordance with the aforesaid Orders; and

[fol. 3057] The stipulations of settlement approved by the said Orders of December 28 and December 29, 1959 made herein having provided that neither the stipulations of settlement nor any proceedings thereunder nor the said Orders nor any proceeding nor action taken pursuant thereto shall be construed or deemed to be evidence or any admission on the part of the defendants or any of them of any liability or wrongdoing whatsoever, and having further provided that if the actions in the United States District Court for the Southern District of New York entitled Breswick & Co., et al. v. Briggs, et al. and Zenn v. Anzalone, or any other action then pending involving the claims and causes of action that are alleged in the consolidated amended complaint herein are not dismissed upon appropriate proceedings therefor, then, upon the request of any defendant herein from whom any consideration has passed to Alleghany Corporation pursuant to the stipulation of settlement approved herein in the aforesaid Orders of December 28 and 29, 1959, Alleghany Corporation will promptly repay to any defendant so requesting all payments theretofore made by such defendant and thereupon the stipulations of settlement pursuant to which such payment was made shall become null and void and of no further force and effect as to such defendant; and

Said Order made herein on December 29, 1959 having further directed that upon full compliance with the remaining terms of the Settlement approved by this Court on March 12, 1959 and the Second Supplement Stipulation of Settlement approved by this Court on December 29, 1959 and the provisions of said Order of December 29, 1959, [fol. 3058] Alleghany Corporation shall execute and deliver a general release in the form annexed as Exhibit "B" to the Stipulation of Settlement dated July 25, 1955 filed herein

running to each of the persons named in said form of release or their estates, further directing that a final judgment may then be entered by any party to the action, and further directing that plaintiffs and their counsel and accountants, objectant Rosen and his attorneys, the plaintiffs in the action entitled Breswick & Co., et al. v. Briggs, et al., Civil Action No. 98-371, United States District Court for the Southern District of New York, and their attorneys, the financial consultants to the Breswick plaintiffs and objectant Rosen and all other attorneys for stockholders who may be entitled thereto may apply at the foot of the final judgment to be entered herein for allowance of expenses and reasonable counsel, accountants' and consultants' fees to be paid by Alleghany Corporation for services rendered to Alleghany Corporation and its stockholders in this Court and other forums with respect to the matters alleged in the Consolidated Amended Complaint herein; and

It appearing from the affidavit of Charles T. Ireland, Jr., dated June 21, 1960, annexed hereto, that the sum of $3,000,000 has been paid to Alleghany Corporation by defendants herein in accordance with the stipulations of settlement made herein and the Orders of this Court made herein on December 28 and December 29, 1959, that 130,000 shares of the common stock (voting) of Investors Diversified Services, Inc. ("IDS") have been transferred by Murchison Brothers to Alleghany Corporation in exchange for [fol. 3059] 130,000 shares of the Class A common stock (non-voting) of IDS in accordance with paragraph 12 of the aforesaid Order of December 29, 1959, that within the contemplation of paragraph 12A of the aforesaid Order of December 29, 1959 nominees of Alleghany Corporation's designation were elected as directors of IDS on April 19, 1960 and prior thereto approval, by the several underlying registered investment companies with which IDS has investment advisory and underwriting contracts, of new investment advisory contracts was obtained, that a letter in

the form of Exhibit "A" to the Stipulation of Settlement dated July 25, 1955, has been duly executed and delivered by the escrowee to Alleghany Corporation and Murchison Brothers, that a general release in the form annexed as Exhibit "B" to the Stipulation of Settlement dated July 25, 1955 filed herein has been delivered to each of the persons named in said form of release or their estates, and that all actions to be taken pursuant to the stipulations of settlement made herein and the aforesaid Orders of December 28 and December 29, 1959, prior to and as conditions for the entry of a final judgment herein have been taken,

NOW, THEREFORE, on application of Charles T. Ireland, Jr., attorney for defendant Alleghany Corporation, and upon reading the memorandum decision herein of this Court dated March 12, 1959, the Orders of this Court filed herein on December 28, 1959 and December 29, 1959 (Owen McGivern, J.), the transcript of the hearing held herein on December 28, 1959 upon the settlement of the aforesaid Orders, the Stipulation of Settlement dated July 25, [fol. 3060] 1955, Supplemental Stipulation of Settlement and Second Supplemental Stipulation of Settlement, and the affidavit of Charles T. Ireland, Jr., annexed hereto, it is

ADJUDGED AND DECREED that the complaint be and the same hereby is dismissed on the merits and with prejudice; and it is further

ADJUDGED AND DECREED that plaintiffs and their counsel and accountants, objectant Rosen and his attorneys, the Breswick plaintiffs and their attorneys, the financial consultant to the Breswick plaintiffs and objectant Rosen and all other attorneys for stockholders who may be entitled thereto may apply at the foot hereof, at such time and in such manner as may be fixed by further order of this Court, for an allowance of expenses and reasonable counsel, accountants' and consultants' fees to be paid by Alleghany Corporation for services rendered to Alleghany

Corporation and its stockholders in this Court and other forums with respect to the matters alleged in the Consolidated Amended Complaint herein; and it is further

ADJUDGED AND DECREED that this Court reserves jurisdiction for the purpose of awarding such allowance of expenses and reasonable counsel, accountants' and consultants' fees and of making any orders or awarding such other relief as may be appropriate in connection therewith.

ENTER,

s/ O. McG.
J.S.C.

Filed

June 21, 1960
New York
Co. Clerk's Office

[fol. 3061]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 7244/1954

SADIE ZENN, *et al.*,

Plaintiffs,

—against—

J. J. ANZALONE, *et al.*,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

CHARLES T. IRELAND, JR., being duly sworn, deposes and says:

1. I am attorney for defendant Alleghany Corporation in the above entitled action and am executive vice-president of Alleghany Corporation.

2. Prior to December 31, 1959 defendant Allan P. Kirby paid to Alleghany Corporation the sum of one million one hundred thousand ($1,100,000) dollars in accordance with the terms of the Supplemental Stipulation of Settlement dated December 24, 1959 entered into in the above entitled action and in accordance with the Order of this Court entered on December 28, 1959 approving the said Supplemental Stipulation of Settlement. On February 18, 1960 defendant Anita O'Keeffe Young, as Executrix of the Estate of Robert R. Young, Deceased, paid to Alleghany Corporation the sum of nine hundred thousand ($900,000) dollars in accordance with the Second Supplemental Stipulation of

Settlement entered into on December 24, 1959 and the Order [fol. 3062] of this Court entered on December 29, 1959 approving the said Second Supplemental Stipulation of Settlement. On March 15, 1960 the sum of one million ($1,000,000) dollars was paid to Alleghany Corporation by the Estate of Sid W. Richardson, the Murchison defendants, Allan P. Kirby, and the Estate of Robert R. Young, defendants in the above entitled action, in accordance with the so-called Basic Settlement approved by this Court in its memorandum dated March 12, 1959.

3. On April 7, 1960, Murchison Brothers transferred to Alleghany Corporation 130,000 shares of Common Stock (voting) of Investors Diversified Services, Inc. ("IDS") in exchange for 130,000 shares of Class A common stock (non-voting) of IDS in accordance with the aforesaid Basic Settlement and paragraph 12 of the aforesaid Order of December 29, 1959.

4. On April 19, 1960, at the annual meeting of the stockholders of IDS nominees of Alleghany Corporation's designation were elected as directors of IDS; prior thereto, at the April 6, 1960 annual meetings of stockholders of the several underlying investment companies with which IDS has investment and underwriting contracts, new investment advisory agreements with IDS were authorized to become effective simultaneously with the termination of the then existing agreements by the aforesaid exchange of stock.

5. A letter in the form of Exhibit "A" to the Stipulation of Settlement dated July 25, 1955, was duly executed and delivered by the escrowee to Alleghany Corporation and [fol. 3063] Murchison Brothers and the provisions thereof have been effectuated.

6. On May 13, 1960, a general release in the form of Exhibit "B" to the Stipulation of Settlement dated July 25, 1955, duly executed in behalf of Alleghany Corporation was delivered to each of the persons named in such form or their estates.

7. All actions to be taken pursuant to the so-called Basic Settlement approved by this Court on March 12, 1959, the Supplemental Stipulation of Settlement dated December 24, 1959, the Second Supplemental Stipulation of Settlement entered into on December 24, 1959, and the Orders of this Court entered herein on December 28 and December 29, 1959 prior to and as conditions for the entry of a final judgment pursuant to paragraph 13 of the aforesaid Order of December 29, 1959 dismissing the consolidated amended complaint herein, have been completed.

s/ CHARLES T. IRELAND, JR.
Charles T. Ireland, Jr.

Sworn to before me
this 21st day of June, 1960.

s/ Mary Ellen Magennis

MARY ELLEN MAGENNIS
Notary Public, State of New York
No. 41-7662350 Qual. in Queens Co.
Certificate filed in New York County
Commission Expires March 30, 1962

(NOTARIAL SEAL)

[fol. 3063a]

IN THE UNITED STATES DISTRICT COURT

DEFENDANT PHILLIPS EXHIBIT No. R.P. 27

"Nov.18 CTI said:

APK offered me $45,000 on a 10-year contract
15,000 each to be contributed
by APK, Murc., AO'KY(oung)

30,000 or $900,000 = N.Y. Central stock from APK
shares each each
CWM
AO'KY

TOTAL $2,700,000

I rejected the contract as not legally or morally proper, altho CTI explained it was APK's idea it be publicly announced and put before court. I suggested that at 4½% annually $45,000 was the interest on $1,000,000, and that this capital value of the proposed contract be added to the offer, making it $1,233,333 each, or $3,700,000. APK objected but said neither "no" nor "yes". We left it to be mulled over until tomorrow morning.

For APK = How do we insure M does not control IDS

S.G. thot I could take 10-yr contract provided it put before ct, but that I was rt in rejecting.

G.B. agreed with my position.

Advise = reject NYC as a deteriorating situation

OK, GB + SG. "Dont let this $900,000 get away from you." Cash = ok I suggested we could get more"

[fol. 3964]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 60-351

ALLEGHANY CORPORATION, Plaintiff,

—against—

ALLAN P. KIRBY, RANDOLPH PHILLIPS,

CHARLES T. IRELAND, JR. and

FRED M. KIRBY, Defendants.

Appearances:

Townley, Updike, Carter & Rodgers, Esqs., of New York. N. Y., Attorneys for Plaintiff; Stuart N. Updike, Esq., J. Howard Carter, Esq., Lee W. Meyer, Esq., Of Counsel.

[File endorsement omitted]

Donovan, Leisure, Newton & Irvine, Esqs., of New York, N. Y., Attorneys for Defendants Allan P. Kirby and Fred M. Kirby; Granville Whittlesey, Jr., Esq., Roy W. McDonald, Esq., Robert M. Loeffler, Esq., Walter L. Stratton, Esq., Robert V. Dunn, Esq., John J. McCann, Esq., Of Counsel.

Randolph Phillips, of New York, N. Y., Defendant *Pro Se*.

[fol. 3065] Kissam & Halpin, Esqs., of New York, N. Y., Attorneys for Charles T. Ireland, Jr.; Leo T. Kissam, Esq., Anthony J. Genovese, Esq., Edmund K. Leach, Esq., Of Counsel.

OPINION—May 28, 1963

DAWSON, D. J.:

The Nature of the Action

This action represents another chapter in the checkered career of Alleghany Corporation. Although brought as a suit in equity, it appears to be but another skirmish in the battle of tycoons (the Murchison Brothers of Texas on one side, and Allan P. Kirby of New Jersey on the other) for control of a rich plum—Alleghany Corporation. With the advantage of great wealth on both sides, and the logistical support of battalions of lawyers and squads of publicity men, the parties have ranged around the country using to the full the broad discovery processes of the Federal Rules. Over 20,000 pages of pre-trial depositions were taken. Now the action has been tried.

The action was originally commenced on September 8, 1960 as a derivative stockholders' action brought by John D. Murchison and Clint W. Murchison, Jr. and Gerard S. Fossland, as stockholders of Alleghany Corporation, against Allan P. Kirby, Randolph Phillips, Fred M. Kirby, [fol. 3066] Charles T. Ireland, Jr. and five other defendants. The suit was brought as one on behalf of Alleghany Corporation, which was named as a nominal defendant. It contained two causes of action.

It is interesting that the action was started almost coincidentally with the institution of a proxy fight by the Messrs. Murchison against Mr. Kirby for control of Alleghany Corporation, and the filing of the suit was hailed with a great flurry of publicity apparently intended to affect the voting in the proxy contest for control of the corporation. The proxy fight was successful and the Murchisons apparently came into control of Alleghany Corporation. As a result the complaint was amended on June 27, 1962 to substitute Alleghany Corporation as party plaintiff in place of the original plaintiffs and the action dismissed as to all defendants other than Allan P. Kirby, Randolph Phillips, Fred M. Kirby and Charles T. Ireland, Jr.

A number of pre-trial conferences were held to try to define the issues in the action. On December 18, 1962, with the approval of the Court, an amended and supplemental complaint was filed. This complaint dropped the allegations of the second count of the original complaint. It continued the first count of the original complaint which alleged [fol. 3067] in substance that Allan P. Kirby, Ireland and Phillips had committed a fraud upon this Court in obtaining this Court's order of December 24, 1959 vacating as to Kirby this Court's prior injunctive order of October 27, 1955 entered in the action of *Breswick* v. *Briggs*, hereinafter described. The amended and supplemental complaint also contained allegations charging that Kirby had committed a fraud upon the New York State Supreme Court by failing to adduce before that court, in connection with hearings held therein in the action of *Zenn* v. *Anzalone*, facts as to Kirby's liability on claims asserted therein based upon the so-called 1950 Exchange Transaction between Alleghany Corporation and Kirby and certain other officers of that corporation (hereinafter described).

The amended and supplemental complaint seeks the following relief:

1. That the Court declare null and void a certain stipulation of settlement, dated December 24, 1959, in *Zenn* v.

Anzalone, and declare null and void so much of its order of December 24, 1959 vacating its injunctive order of October 27, 1955 and approving the separate Kirby settlement in *Breswick* v. *Briggs,* or, in the alternative, enter an order enjoining Kirby from pleading such order or judgment as *res judicata* or collateral estoppel.

[fol. 3068] 2. That the Court declare null and void so much of the order approving the separate Kirby settlement which was entered by the New York Supreme Court in *Zenn* v. *Anzalone* on December 28, 1959; or, in the alternative, enter an order enjoining Kirby from pleading any such order or judgment as *res judicata* or collateral estoppel.

3. That the Court declare null and void so much of the judgments of the New York Supreme Court entered on February 4, 1960 and June 21, 1960 as dismissed the complaint in *Zenn* v. *Anzalone* on the merits with respect to Kirby; or, in the alternative, enter an order enjoining Kirby from pleading any such judgments as *res judicata* or collateral estoppel.

4. That the Court declare null and void, and rescind any and all releases on behalf of Alleghany delivered to Kirby in either the *Breswick* or *Zenn* actions.

5. That in the event the Court grants the relief hereinbefore sought, the Court rescind the 1950 Exchange Transaction hereinafter described, or award against Kirby and in favor of Alleghany Corporation damages measured by the value of a rescission of the said Exchange Transaction; or, in the alternative, order the filing of an amended complaint in this action based upon the 1950 Exchange Transaction and direct a prompt trial thereof.

[fol. 3069] 6. That the Court direct Kirby, Phillips and Ireland to account to Alleghany for all moneys, profits and benefits received by them as a result of the secret agreement and conspiracy alleged in the complaint.

7. That the Court direct Kirby, Ireland and Fred M. Kirby to reimburse Alleghany for legal fees and expenses incurred by it in actively defending this action from September 8, 1960 to June 14, 1961, and with respect to attorneys' fees incurred on its behalf prior to the filing of the amended and supplemental complaint.

8. That the Court award to Alleghany Corporation the costs and disbursements of the action.

Further pre-trial conferences were held. Plaintiff was directed to submit a proposed statement of the issues. The first issue submitted in the proposed Statement of Issues states substantially the principal contentions of the plaintiff. This section of the statement reads as follows:

> "1. Did Kirby procure by fraud an order of this Court dated December 24, 1959, vacating insofar as Kirby was concerned, an order of this Court dated October 27, 1955; an order of the New York County Supreme Court dated December 28, 1959; a judgment of the New York County Supreme Court dated February 4, 1960; and releases from plaintiff subsequent thereto by means of:
>
> [fol. 3070] (a) A corrupt agreement with Ireland and Phillips whereby Kirby was enabled to settle his liabilities to Alleghany Corporation which had been asserted in derivative actions in this Court and the New York County Supreme Court for an amount far less than he would have had to pay but for such agreement, and Phillips and Ireland personally benefited from such agreement; or,
>
> (b) A failure by Kirby to adduce or cause to be adduced before the State Court or its Referee or this Court or its Special Master in the *Zenn* (State) and *Breswick* litigations facts material to an evaluation of Kirby's liability on claims arising out of the 1950 Exchange Transaction and the fairness and adequacy of Kirby's proposed settlement in connection therewith?"

Statement 4 of the Statement of Issues sets out plaintiff's contentions with reference to the relief sought. This statement reads as follows:

> "4. May this Court grant relief from such a fraud:
>
> (a) By setting aside the judgment of the New York County Supreme Court entered in *Zenn* v. *Anzalone* with respect to Kirby and the releases obtained by Kirby in connection therewith; or,
>
> (b) By enjoining Kirby from pleading such judgments and releases in bar of a separate trial in this action on the merits of the 1950 Exchange Transaction; or,
>
> (c) By granting money damages to the corporation measured by the difference between the amount [fol. 3071] Kirby paid in settlement and the fair settlement value of the claim against Mr. Kirby in the absence of his fraud?"

A trial was held commencing on April 1, 1963, and continuing until April 19, 1963. Two thousand four hundred seventy-four pages of testimony were taken. Two hundred twenty-two exhibits were introduced. A full opportunity has been given to the parties to explore thoroughly by discovery all the facts necessary for a determination of the issues and a full and complete trial was had thereon. The Court now renders its opinion, findings of fact and conclusions of law as follows:

The Jurisdiction of the Court

The action is one, essentially, to set aside as to Kirby a settlement of a previous derivative stockholders' suit which had been brought against Kirby and others in a New York State Court on the basis that the settlement of Kirby's liability to Alleghany Corporation had been accomplished by fraud in that (1) Kirby had made a secret, corrupt agreement with a person in a controlling position

in the stockholders' litigation to give that person a benefit, kept secret from the Court, if the derivative litigation were [fol. 3072] settled favorably to Kirby, and (2) that Kirby had failed to adduce before the State Court and its Referee facts known to him which were necessary to any evaluation of his liability in the derivative stockholders' litigation.

It is interesting that although the Murchisons, who were also defendants in the derivative stockholders' litigation in the New York Court, succeeded in securing a settlement of their liability, no attempt has been made to upset the settlement insofar as it relates to them.

Defendants urge that this Court does not have jurisdiction of this action. They urge, in the first place, that this Court does not have jurisdiction to vacate orders and judgment of the New York State Court approving settlement of the derivative stockholders' litigation. This argument is unsound. This is an independent action. This action does not seek to reverse the decision of the State Court but rather to prevent the defendant Kirby from claiming the benefits of a judgment of that Court which plaintiff alleges was obtained by fraud. If there is diversity of citizenship such independent action may lie and may be maintained in this Court.

The United States Supreme Court in *Marshall* v. *Holmes*, 141 U.S. 589 (1891), pointed out, as to the jurisdiction of [fol. 3073] the Federal Court in such an action:

> "... While it cannot require the state court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court. It would simply take from him the benefit of judgments obtained by fraud." At p. 599.

See also, *Hewitt* v. *Hewitt*, 17 F.2d 716 (9th Cir. 1927); *Arrowsmith* v. *Gleason*, 129 U.S. 86, 101 (1889); *Hadden* v. *Rumsey Products*, 196 F.2d 92 (2d Cir. 1952); *Griffith* v. *Bank of New York*, 147 F.2d 899 (2d Cir. 1945), *cert. denied*, 325 U.S. 874 (1945).

The defendants urge in the second place that there is no diversity of citizenship in this case. At the time of the institution of the action there was undoubtedly diversity of citizenship. The plaintiffs were all residents of states other than those of the defendants. As has been said, the action was brought as a derivative stockholders' action on behalf of Alleghany Corporation. When the Murchisons acquired control of Alleghany Corporation, Alleghany Corporation was substituted as plaintiff in the action, being the party [fol. 3074] on whose behalf the action was brought. Defendants urge that Alleghany has a principal place of business in New York and that the defendants Phillips and Ireland are residents of New York and that this, therefore, divested any diversity of citizenship. This is not correct. Once jurisdiction has been acquired a subsequent change of parties does not remove such jurisdiction. In *Mollan* v. *Torrance*, 22 U.S. 154 (9 Wheat. 537) (1824), Chief Justice Marshall said:

> "It is quite clear, that the jurisdiction of the court depends upon the state of things at the time of the action brought, and that after vesting, it cannot be ousted by subsequent events. . . ."

Thus the rationale that jurisdiction is decided by facts existing at the time the action is brought is applied in a situation where a party dies and a non-diverse representative is substituted. *Dunn* v. *Clarke*, 8 Pet. 1 (1834). See *Smith* v. *Sperling*, 354 U.S. 91 (1957). Also, in an action of ejectment where the jurisdiction of the court had attached against the tenant in possession the substitution of the landlord for such tenant will not defeat the jurisdiction of the court. *Hardenbergh* v. *Ray*, 151 U.S. 93, 94 (1893).

The Court concludes that this Court has jurisdiction of the action.

[fol. 3075]

The Background of This Litigation

It is impossible to understand the nature of this suit without going into the prior legal proceedings which resulted in this action.

In the Spring of 1954, eight derivative stockholders' actions were brought in the Supreme Court, New York County, on behalf of Alleghany Corporation against various of its officers and directors, including Allan P. Kirby, Robert R. Young, Clint W. Murchison, Jr., John D. Murchison and others. In June, 1954, these eight actions were consolidated into one action under the title of *Zenn* v. *Anzalone*. The firm of Pomerantz, Levy & Haudek was designated as plaintiffs' general counsel. Two later actions were consolidated into this action in May, 1955. A consolidated amended complaint was later filed. It alleged eight causes of action. The first cause of action was based on the so-called 1950 IDS Exchange Transaction. This 1950 Exchange Transaction, so far as Kirby was concerned, consisted of the transfer by Kirby on May 15, 1950 to Alleghany of 2,420 shares of Alleghany Preferred Stock Series A for 24,062 Class A shares of Investor's Diversified Services, Inc. (hereinafter IDS). This exchange had been authorized pursuant to a resolution of the Board of Directors of Alleghany fixing [fol. 3076] the cost at the market price of Alleghany stock and at the market price, or cost to Alleghany, whichever was higher, of the IDS Class A stock. This resolution of the Board of Directors of Alleghany was subsequently approved and adopted by the stockholders of Alleghany Corporation at its annual meeting of May 15, 1950. This transaction was attacked on the ground that the proxy statement for the stockholders' meeting contained false and misleading statements and on the ground that the defendants, including Kirby, had knowledge concerning earning developments of IDS and an increase in market value both

foreseeable and foreseen which was not known to the stock holders of IDS and Alleghany.

The other causes of action alleged in the consolidated amended complaint in the *Zenn* action arose from the following transactions, among others: the arrangements between Alleghany and defendants Murchison and Richardson for the purchase by Murchison and Richardson of 800,000 shares of New York Central stock from the C & O; an agreement in December 1954 pursuant to which Alleghany transferred to Murchison Brothers 130,000 common voting shares of IDS in exchange for 130,000 shares of non voting Class A shares of IDS; and the offer by Alleghany to exchange new convertible preferred stock for outstanding 5½% [fol. 3077] Series A preferred stock.

Allan P. Kirby was never served in the *Zenn* actions in the State Court.

On or about May 20, 1954, similar actions were instituted in this Court by the plaintiffs in the *Zenn* actions. These actions have been denominated as *Zenn* (Federal) and the other actions have been denominated as *Zenn* (State). The actions pending in this Court have never been tried and never formally dismissed or disposed of.

On February 14, 1955 an action entitled *Brunswick* v. *Briggs* was commenced in this Court. The amended complaint later filed in that action contained some but not all of the claims alleged in the consolidated amended complaint in *Zenn*. It also was a derivative action brought on behalf of Alleghany Corporation. The *Brunswick* complaint, however, did not include the so-called 1950 IDS Exchange Transaction. The attorney for the plaintiffs in the *Brunswick* action was George Brussel, Jr. Defendant Randolph Phillips was retained as a consultant to Brussel.

In April 1955, as a result of negotiations between Pomerantz, as general counsel to plaintiffs in the *Zenn* action, and representatives of the defendants, a tentative settlement of [fol. 3078] all claims asserted in any pending derivative action involving Alleghany was agreed upon. The consideration was $700,000 cash to be paid by the defendants

to Alleghany Corporation, plus the revision in favor of Alleghany of certain loss guarantees issued by the Murchisons to Alleghany in connection with certain joint ventures. The terms of the settlement were reduced to writing in a stipulation of settlement entered into between the plaintiffs and the defendants in the *Zenn* action dated July 25, 1955. In that same month Alleghany moved in the New York State Supreme Court for approval of the proposed settlement. On August 18, 1955 the Supreme Court appointed Robert J. Fitzsimmons as Referee and directed him to "inquire on the merits of the fairness, reasonableness and adequacy of a stipulation of settlement dated July 25, 1955 and to report as to whether such proposed settlement should be approved and confirmed." Notice of the terms of the proposed settlement was mailed to all stockholders of record of Alleghany advising them of the proposed settlement and notifying them of their right to attend a hearing thereon. Hearings on the proposed settlement commenced on September 19, 1955. Samuel R. Rosen, a stockholder of Alleghany, represented by the law firm of Graubard & Moskovitz, intervened and appeared at the hearings [fol. 3079] as an objectant to the proposed settlement. Phillips was also a consultant to Graubard of that firm and worked with Graubard and Rosen in objecting to the proposed settlement.

From September 19, 1955 until January 1956, Mr. Fitzsimmons, as Referee, conducted extensive hearings with respect to the merits of the claims alleged in the *Zenn* action and the adequacy and fairness of the proposed settlement. Numerous stockholders of Alleghany appeared in person or by counsel during the course of the hearings. Eighteen witnesses were called—seven by the proponents of the settlement and eleven by the objectants. Some four hundred and eighty exhibits were marked in evidence and some forty-six hundred pages of testimony were taken. The Referee rendered a report on November 17, 1958.

In the hearings before the Referee Mr. Kirby did not appear. He was excused from appearing by the Referee.

Mr. Graubard, as counsel for objectant Rosen, both before the Referee and again in his brief before the Supreme Court in opposition to approval of the Referee's report, urged that the settlement should not be approved and confirmed without the testimony of Kirby. This contention was overruled by the Referee.

[fol. 3080] The attorneys in the *Breswick* action asserted that their exclusion from the settlement negotiations in the *Zenn* action had been improper and unfair. They therefore brought a proceeding in this Court to enjoin the defendants therein from interposing in the *Breswick* action "any defense based upon any judgment entered in any action other than this action pursuant to any agreement not negotiated with the [Breswick] plaintiffs or their attorneys."

This Court, on October 27, 1955, granted such an injunction to the *Breswick* plaintiffs. At the conclusion of the hearings before the Referee in *Zenn*, the defendants in the *Breswick* action moved in this Court in March 1956 to vacate the injunctive provisions of the October 27, 1955 order in *Breswick*. Following the argument of the motion, Judge Walsh of this Court suggested that settlement of the entire litigation be discussed between the defendants and the *Breswick* plaintiffs. As a result, conferences were held between the parties.

During the course of these discussions defendants offered to increase the cash payment portion of the settlement from $700,000 to $1,000,000 and the Murchisons offered to return control of IDS to Alleghany by reversing the 1954-55 Exchange Transaction and transferring 130,000 voting shares [fol. 3081] of IDS to Alleghany in return for 130,000 non-voting shares of IDS. The proposed settlement, as augmented by this additional offer by the defendants, became known as the "Basic Settlement."

This Basic Settlement was, however, rejected by Mr. Brussel, representing the plaintiffs in the *Breswick* action. Nevertheless, the defendants in the *Breswick* action renewed their motion to vacate this Court's injunctive order

of October 27, 1955 on the ground that they had conducted settlement negotiations with the *Breswick* plaintiffs in good faith and that these negotiations had resulted in offers in excess of the offer accepted by general counsel for the plaintiffs in *Zenn*.

This Court, by order of October 3, 1956, appointed Robert J. Fitzsimmons (who was then serving as Referee in *Zenn*) as Special Master in the *Breswick* action to hear and report to the Court whether the order of October 27, 1955 "should be vacated or modified by reason of any and all matters which may have taken place since October 27, 1955, including, without limitation however, the details of the aforesaid settlement negotiations between [the *Breswick*] plaintiffs and defendants." Mr. Fitzsimmons, as Special Master, then conducted hearings pursuant to this order. [fol. 3982] On November 17, 1958 Mr. Fitzsimmons submitted his report to this Court in the *Breswick* litigation recommending that the injunctive order of October 27, 1955 be vacated. He had, on the same day, submitted the report to the Supreme Court in the *Zenn* litigation recommending that the original stipulation of settlement dated July 25, 1955, as augmented by the additional settlement (i.e., the Basic Settlement) be accorded judicial approval by that Court. He said:

> "To summarize, the settlement whose fairness must be determined by this Court consists of the settlement originally submitted to this Court, as increased by the most recent augmented offer of defendants. By the terms of this amended settlement proposal, defendants are to pay the sum of $1,000,000 in cash to Alleghany; the 130,000 IDS share transaction is to be reversed; and the loss guarantee running from Murchison Brothers to Alleghany is to be amended so as to apply separately rather than in the aggregate to each of the joint ventures between Murchison Brothers and Alleghany.
>
> "Apart from the payment of the sum of $1,000,000 in cash, it is not altogether easy to ascribe a precise valu-

ation in dollars and cents to the other elements of the proposed settlement. It is significant, however, that counsel for objectant Rosen, on the hearings before me, evaluated the rescission of the 130,000 IDS share transaction at more than $5,000,000; counsel for the Breswick plaintiffs in the Federal Court action has conceded that such rescission is worth more than $1,750,000. I [fol. 3083] further find that the amendment of the loss guarantee running from Murchison Brothers to Alleghany has a value to Alleghany of at least $300,000.

"I have considered the augmented offer of settlement in the light of the current probability of success or failure of the various causes of action alleged herein. So evaluated it appears to me that the amended offer of settlement constitutes a fair, reasonable and adequate basis for a settlement of this litigation and is worthy of judicial approval. In my considered judgment, it would be for the best interests of Alleghany and its stockholders to have this substantial settlement judicially approved so as to bring an end to this protracted litigation with its attendant expenses and its constant demands on the time of Alleghany's officers, who for many months have been prevented by this litigation from devoting all of their time and efforts to the business and affairs of the corporation.

"Accordingly, I respectfully report and recommend that the original stipulation of settlement herein, as augmented by the latest subsequent offer of defendants, be accorded judicial approval."

Following Mr. Fitzsimmons' report as Referee in the *Zenn* litigation and as Special Master in the *Breswick* action, the matter of confirming the respective reports was argued extensively in this Court and in the New York State Supreme Court. In the *Zenn* litigation Mr. Rosen, as objectant, filed exceptions to the Referee's report and thereafter briefs were filed in support of and in opposition to the confirmation of the Referee's report.

[fol. 3084] On March 12, 1959, after considering the briefs submitted and hearing oral argument, Mr. Justice McGivern of the New York Supreme Court approved the proposed settlement in the *Zenn* litigation. He stated that

> "... this court is of the opinion that the original stipulation of settlement herein, as now augmented by the latest subsequent offer of defendants, is fair and reasonable, was negotiated at arms' length, is free from fraud or collusion and is in the best interests of the Alleghany Corporation and its stockholders. Accordingly, approval is accorded the proposed compromise, and the Referee's report is confirmed and adopted as the decision of this court."

Mr. Justice McGivern held, however, that the injunctive order in the *Breswick* action pending in the Federal Court constituted an impediment to the conclusion of the settlement and directed that no order be entered on his decision until he had been advised by affidavit that the *Breswick* injunction had been lifted.

In the *Breswick* litigation in this Court, plaintiffs moved for an order rejecting the recommendation of the Special Master in his report of November 17, 1958, and defendants filed a cross-motion requesting confirmation of the Master's report. This was argued before Judge Dimock. On September 22, 1959 Judge Dimock rejected Mr. Fitzsimmons' report as Special Master and referred the matter [fol. 3085] back to him for further hearings as to whether the injunctive order of October 27, 1955 should be vacated.

It was at this point that negotiations were entered into which are directly related to the matter now in issue before this Court.

It appeared to Phillips, who was a consultant to Brussel in the *Breswick* litigation, and to Graubard, as attorney for objectant Rosen in the *Zenn* litigation, that the order of Judge Dimock gave them a veto power over any settlement and improved their position considerably. Phillips communicated with Ireland by telephone, advising him that

as a result of Judge Dimock's decision new hearings would be held at which Kirby would have to testify and he indicated that the testimony Kirby might be compelled to give might be disastrous to him. It was indicated, however, that further settlement discussions between Phillips and Ireland might be held. Ireland and Phillips had become friends when they were both employed by the New York Central Railroad Company in connection with a proxy fight which resulted in Robert R. Young getting control of that railway. Phillips' association with the railroad was terminated on September 30, 1954. Young had, however, suggested to [fol. 3086] Ireland that he remain on friendly terms with Phillips, knowing that Phillips was then actively associated with the minority stockholders' litigation which had been brought against directors of Alleghany Corporation. Ireland had kept himself familiar with this derivative litigation from 1955 forward.

Prior to January 25, 1958, Young was the Chief Executive Officer of Alleghany, as well as Chairman of the Board of New York Central. On that date he died. Shortly after his death Kirby became Chief Executive Officer and Chairman of the Board of Alleghany.

After Judge Dimock's decision on September 22, 1959, Kirby either directly or indirectly authorized Ireland to explore settlement possibilities of the derivative litigation with Phillips. At that time Mr. Daly, of the firm of Lord, Day & Lord, was representing Alleghany Corporation and Kirby and the other defendants. Ireland met with Daly and suggested that he have discussions with Phillips. Daly, who was not enthusiastic about the prospect, nevertheless said he would not stand in the way of efforts to reach a settlement. Apparently the various parties had reached an impasse in their settlement negotiations. Daly and Graubard had not been able to agree on the procedure to be [fol. 3087] followed in the settlement negotiations. Daly wanted Pomerantz to be present during negotiations but Graubard objected to that. Daly and Mr. Adams (who represented the Murchisons) took the position that Phillips should not be allowed to participate in the settlement dis-

cussions. As time went on they would not talk to him at all. An impasse also existed between Brussel and Daly. Brussel apparently felt that he could not deal with Daly on the basis of confidence.

At this point the avenue of communication so necessary in reaching a settlement seemed to have dried up, but Phillips and Ireland still remained friendly and this avenue of communication remained open. Daly, who represented a number of the defendants in the derivative actions and also represented Alleghany Corporation, thought that new hearings should take place before the Special Master and that Kirby should testify thereat. He felt confident that plaintiffs would not be able to recover in the derivative actions. Kirby, however, felt that the litigation had gone on so long, was so expensive and so disruptive of the corporate business of Alleghany Corporation, that efforts should be made to settle.

At the same time the attorneys for the plaintiffs were having difficulties. Rosen, the objectant in the *Zenn* State [fol. 3088] Court action, refused to authorize the expenditure of funds for an appeal from the approval of the Special Master's report. The *Breswick* plaintiffs were Dr. Bailey, Carl Bresnick and Myron Neisloss. Dr. Bailey retained new counsel and directed him not to continue further with the litigation. Carl Bresnick died a day or two after Judge Dimock's decision, and Phillips learned subsequent thereto that he had previously sold his Alleghany shares. Neisloss, in view of Bresnick's death, did not want to be obligated for any further disbursements and cancelled Phillips' power of attorney and retained new counsel. Phillips felt, in view of those developments, that he would use his best efforts to "bring this rather leaking ship safely into port." Apparently defendants were not aware of these difficulties of the plaintiffs.

Phillips, with his customary degree of energy, did not allow the unseaworthy condition of his ship to deter him from further activities. In the Fall of 1959 the case of

Neisloss v. *Arpaia*,* in which Phillips was a co-plaintiff, was activated. Phillips also threatened to sue Alleghany with respect to the legal fees Alleghany had paid to its counsel Lord, Day & Lord. Phillips also served a demand upon the corporation for a list of its stockholders. None of these activities was particularly comforting to the defendants.

[fol. 3089] At any rate, by the Fall of 1959 the stage was set for settlement discussions in the *Zenn* and *Breswick* cases. Kirby admittedly was interested in seeing whether a settlement could be arrived at.

On October 12th Kirby wrote to his attorney, *Daly*, inquiring what his maximum liability would be in the event plaintiffs were successful in all of the actions which they had brought. Daly replied by letter dated October 22, 1959. He indicated that it was impossible to give an accurate estimate of the liability in all of the actions. He stated, however, that liability in connection with the 1950 IDS Exchange Transaction might, alone, cost Kirby $22,800,000, or, if he were held jointly liable with others who participated in the transaction his liability might be $39,350,000. Daly testified at the trial that he did not believe that plaintiffs would have been successful in the derivative actions which they had brought, and that his estimate of maximum liability was based upon the assumption that they were successful in all aspects of their cases, although he did not believe that would be so.

Kirby, in any event, authorized Ireland to conduct settlement negotiations with Phillips, it being understood that Ireland had no authority to make a final settlement without [fol. 3090] the approval of Kirby. Brussel and Graubard were agreeable to Phillips conducting settlement negotiations with Ireland, with the same understanding that the settlement discussions would be tentative and he would have no authority to make a final agreement.

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* Reported as *Neisloss and Phillips* v. *Bush*, 293 F.2d 873 (D.C. Cir. 1961).

Ireland had expressed the view that no settlement could be achieved unless arrangements were made in it to provide Phillips with a position of compensation and status. He had so expressed himself to Kirby and Kirby's associates. He had the impression, as did some of the others involved in the litigation, that Phillips controlled the litigation of the minority stockholders. Daly stated that he believed Phillips controlled this litigation. Graubard denied that Phillips controlled the litigation. There was no doubt, however, that Phillips, as consultant to the attorneys representing the minority stockholders, had a very important *position in the litigation and that his reaction to a settlement* offer might in fact prove decisive. The fact that he was used as a conduit for settlement discussions with Ireland also enhanced his position.

We now come to the point which involved the issue of fact in this case. Plaintiff Alleghany Corporation contends [fol. 3091] that the settlement which was finally arrived at was one which was achieved only because Kirby had entered into a covert, undisclosed understanding with Phillips that Phillips would be rewarded by being given a position in the Alleghany Corporation complex which would provide him with status and compensation, and that this was a secret understanding which Phillips did not disclose to the Court or to the stockholders whom he was purporting to represent. Kirby and Phillips denied any such understanding.

In the event that there was such an understanding between Phillips and Kirby it might indeed have been a basis for setting aside the settlement, since such understanding, if it existed, was not reported to the Court or to the stockholders of Alleghany. Phillips, as a consultant to counsel for the minority stockholders, stood in a fiduciary position. As a proponent of the settlement subsequently arrived at, and being in such position, if such a secret understanding existed Phillips was obligated to reveal it to his principals, the Referee and the Court. In essence, plaintiff contends that Phillips accepted a bribe for his own personal benefit to bring about a settlement of the litigation and that because of this bribe he was ready to enter into a settlement

less advantageous to his principals than would otherwise [fol. 3092] have been the case. This presents a pure issue of fact as to whether such secret agreement did exist. It is the issue on the first aspect of the case.

(1) Was There a Secret Understanding Between Kirby and Phillips, Not Revealed to the Court, That to Induce Phillips to Recommend an Advantageous Settlement for Kirby, Kirby Would Provide Phillips With a Position of Substance and Status in the Alleghany Picture?

This issue is presented by Paragraph 44 of the complaint which alleges:

> "44. In or about October, November or December, 1959, Phillips, Kirby and Ireland entered upon a conspiracy to the effect that, in return for Phillips' betrayal of his fiduciary duties to this Court, to the New York Supreme Court, to Alleghany and its stockholders and to the plaintiffs in the Derivative Actions and in return for his advocacy of the acceptance of a separate settlement by Kirby of Kirby's personal liability upon terms favorable to Kirby and against the corporate interest of Alleghany and IDS, Kirby would secure to Phillips the following personal benefits:
>
> (a) A position of prominence as a director or officer of IDS, Alleghany or one of its affiliates;
>
> (b) A substantial voice in the management and operation of IDS or Alleghany or an enterprise controlled by Alleghany or Kirby;
>
> (c) Employment as a consultant or otherwise by IDS, Alleghany or one of its affiliates at a substantial salary;
>
> (d) Other emoluments or benefits which are not now known to plaintiff."

[fol. 3093] To put this issue in perspective it is probably proper at this time to point out that the settlement agree-

ment which was subsequently arrived at between Kirby and the minority stockholders, and approved by the Court, did not provide any special emolument or position for Phillips. However, some months after the settlement agreement was made and the actions disposed of, Phillips, on the recommendation of Kirby was made a director of IDS, a subsidiary of Alleghany Corporation. Plaintiff contends that this position was the result of an agreement made between Kirby and Phillips, through Ireland, prior to the settlement. Kirby and Phillips denied that there was any such agreement.

Since the charge of the plaintiff was a very serious one the Court allowed the plaintiff wide latitude in pre-trial discovery. Numerous depositions were taken of all the persons who participated in the settlement discussions. The trial allowed a complete exploration of all the discussions and negotiations between the parties to see if there was any indication of the existence of such an agreement. No direct testimony was given by any person or party as to any such secret agreement or understanding. In fact, it was denied by all the principals to these negotiations. Plaintiff, in [fol. 3094] essence, admits that there was no direct testimony of any such secret understanding or agreement. In its brief, at page 74, plaintiff says:

> "It is respectfully submitted that the inferences plaintiff urges here, when considered as a whole, give rise to a conclusion virtually as compelling and as certain as one supported by direct evidence of an express agreement."

It therefore becomes necessary to consider the testimony to see what inferences can be drawn from it. In this connection the Court finds the following facts:

During the Fall of 1959 Kirby did not talk directly to Phillips. There was, however, a series of discussions between Phillips and Ireland looking toward settlement of the litigation. Ireland reported back to Kirby whatever he considered of importance. Ireland also reported to Daly, and Daly kept Adams (the attorney for the Murchisons) and Pomerantz informed of his talks with Ireland.

On November 18, 1959 Phillips and Ireland had a conversation in the course of which Ireland asked Phillips how his group would react to an offer of $900,000 from each of the three major defendants, the Murchisons, the Young estate and Kirby. During this same discussion Ireland [fol. 3095] suggested that it might be possible to arrange a consultantship for Phillips. Ireland could not remember that any specific amount was mentioned. Phillips, however, testified that a figure of $45,000 a year for ten years was mentioned, and the Court accepts Phillips' testimony as accurate in this respect because apparently this figure is reported in a contemporaneous memorandum of Phillips. The memorandum indicates, however, that the consultantship was not to be a secret matter but something which was to be revealed to the Court as part of the settlement. Phillips rejected the offer of the consultantship. He, Graubard and Brussel determined that they would use this offer as a means of securing an additional sum for Alleghany Corporation. They suggested that the sum if capitalized would be the equivalent of one million dollars and therefore suggested that an additional sum be paid in the settlement to Alleghany Corporation.

Sometime after November 18, 1959, Kirby asked Daly to see Mrs. Young and ask her if she would be willing to pay an additional $900,000 toward settlement of the liabilities of the Young estate. Daly reported that Mrs. Young was not willing to do so. Kirby then determined to ascertain whether he could settle his individual liability separate and [fol. 3096] apart from the liability of the other defendants. He asked Daly for an opinion as to whether he could settle individually. Daly felt that because of Mrs. Young's unwillingness to go through with a separate settlement he was in a position where there might be a conflict of interests between Mrs. Young and Kirby. Daly did not advise Kirby as to whether Kirby could settle individually, feeling that the conflict of interests between Kirby and Mrs. Young might prevent him from giving such advice.

The settlement negotiations continued. Ireland finally came up to $1,000,000 in cash and ultimately to $1,100,000 in cash for settlement of Kirby's individual liability, in

addition to whatever Kirby's obligation was under the Basic Settlement, which, Ireland told Phillips, would amount to either $134,000 or $150,000. Mr. Kirby felt that he could pay this amount since, because of his tax bracket, the payment of $1,100,000 after taxes would cost him only $99,000 net.

Phillips discussed this increased offer with Graubard and Brussel. They instructed him to tell Ireland that the figure of $1,100,000 was agreeable. Graubard thought that the point of settlement on the best terms possible had now [fol. 3097] been reached and he and Brussel instructed Phillips to close on that figure.

Kirby, as a result of Daly's failure to give him advice on the question of whether he could settle individually, decided to change attorneys. He retained the firm of Donovan, Leisure, Newton & Irvine to represent him and they were substituted for the firm of Lord, Day & Lord, with the understanding that they would try to work out a settlement of Kirby's individual liability in the derivative stockholders' actions, if that could be done prior to the end of the year. This date for the settlement was fixed by Mr. Kirby for tax reasons.

Thereupon, on December 19th and 20th, 1959, intensive negotiations took place at the office of Donovan, Leisure between Newton and Teitelbaum, of that firm, Graubard, Brussel and Phillips. The testimony of all those who participated in those settlement discussions was that at no time was there any suggestion of any separate side agreement with Phillips, or any understanding that Phillips was to be rewarded individually in a secret manner for sponsoring the settlement.

Part of the Basic Settlement was the return of the control of IDS from the Murchison Brothers to Alleghany. It appeared that Phillips, Brussel and Graubard were very [fol. 3098] suspicious that there had been a side agreement between Mr. Young and the Murchisons that even if the return of IDS was consummated nevertheless the Murchisons would be allowed to run IDS. They were worried that this agreement would carry over, even though Mr. Young had died. Therefore they made suggestions that the stock-

holders' group bringing the derivative actions should be given a "watchdog" seat on the board of IDS. Phillips testified that while he would have liked to have the post for himself he thought it might well and probably would go to Brussel. Phillips reported to Graubard that he had discussed the subject with Ireland and that Ireland had no objection to such a director on the IDS board if control of IDS was returned to Alleghany. Ireland reported Phillips' demand for a watchdog directorship to Kirby sometime after the middle of December 1959. Kirby refused the demand. He said that nobody need be concerned about the integrity of the settlement and that he would protect the interest of IDS just as well as anybody, and that it was ridiculous for anybody to dictate to him who was going on what board. At the discussions at the office of Donovan, Leisure which eventuated in the final settlement agreement, Kirby definitely refused to make any agreement that there be a watchdog director on the board of IDS. Kirby said [fol. 3099] that any such proposal was completely out and "to hell with that." Graubard testified that Teitelbaum told him "we would not get a seat and we would have to rely upon Mr. Kirby's good faith in the administration of the affairs of Alleghany to see to it that full control over the affairs of IDS was revested in Alleghany." He said that "Mr. Brussel and I discussed this alone as well as with Mr. Phillips and we accepted it." He said the demand was "surrendered."

The settlement agreement arrived at at the office of Donovan, Leisure on the 19th and 20th of December provided generally that Kirby would make a payment of $1,100,000, plus his obligation under the Basic Settlement. It was further agreed that in the event the Murchisons and Mrs. Young did not go along with the settlement that Kirby could be released from his obligation under the Basic Settlement by a payment of $150,000.

On December 22, 1959 the parties appeared before Judge Dimock to obtain his approval of a consent order vacating the injunction of October 27, 1955 as to Mr. Kirby. Judge Dimock had directed that the other parties to the litigation should be notified of the application. At Mr. Adams' request

the hearing was adjourned to the following day. At the [fol. 3100] appearance before Judge Dimock on the following day Mr. Adams, representing the Murchison Brothers, vigorously opposed the proposed order claiming that it would prejudice his clients. Judge Dimock informed Adams that "in the absence of something extraordinary" he would sign the proposed order on the following day, December 24th.

On December 24, 1959 Mr. Daly advised Judge Dimock that the Young Estate was willing to contribute an additional $900,000 to the Basic Settlement. Adams reported to the Court that the Murchison defendants and the Young Estate had agreed upon settlement of the action on that basis. Accordingly Brussel, as counsel for the *Breswick* plaintiffs, agreed to the vacating of the 1955 injunction as to the remaining defendants.

Between December 24th and 28th, 1959, negotiations were had looking to the effectuation of the settlement in the State Court proceedings before Mr. Justice McGivern. Plaintiff's counsel was still suspicious that the return of control of IDS to Alleghany would be a formality rather than a reality and that there was a secret understanding with the Murchisons which would make this a formality. Therefore when the parties appeared before Mr. Justice McGivern on [fol. 3101] December 28th the order settling the action as to the Murchisons included a provision requiring Murchison Brothers to use its best efforts to enable Alleghany Corporation to have nominees of Alleghany's designation elected as directors of IDS at the next annual meeting of stockholders to be held in April 1960.

On December 28, 1959 the order of the Supreme Court of New York County was entered approving the settlement as to Kirby and on the following day the Court approved the settlement as to the other defendants. On December 29th Alleghany delivered a limited release to Kirby releasing him from all claims of any kind or nature embraced in the *Zenn* action, excluding from the release only those obligations which Kirby had yet to perform in connection with the provisions of the Basic Settlement. On February 18, 1960, pursuant to the provisions of the order of the Su-

preme Court, Alleghany issued a release to the Young Estate and thirteen other defendants in the *Zenn* action. In March 1960 similar releases were issued to the Richardson Estate and to Murchison Brothers.

On April 7, 1960 the Murchisons transferred to Alleghany their shares of voting common stock in exchange for non-voting common stock. On May 13, 1960, after this transfer of control had been made by the Murchisons, and [fol. 3102] all the other provisions of the Basic Settlement in the *Zenn* action had been consummated, Alleghany issued general releases in the same form to each of the nineteen defendants in the *Zenn* action. On June 21, 1960 a judgment dismissing the action on the merits as to all parties was entered in the *Zenn* action in the New York Supreme Court.

The issue of fact which the Court has to decide is whether, prior to the action of the New York Supreme Court in approving the settlement, there was any secret, covert understanding between Kirby and Phillips, whereby Phillips was to be rewarded with a position of status and compensation in return for approving the settlement with Kirby. There was no evidence given by any party to the negotiations that there was such an understanding.

In response to a question having to do with the alleged secret understanding between Kirby and Phillips, Phillips testified as follows:

> "Q. At any time in any of those discussions with Mr. Ireland or with Mr. Wallace to the limited extent stated, was there ever any suggestion made by either Mr. Ireland or Mr. Wallace of any personal arrangement for you to not be made a part of the proposed stipulation and placed before the Court?
>
> "A. At no time, sir."

[fol. 3103] Kirby's testimony, in answer to a question of the Court on this point, was:

> "The Court: . . . Mr. Kirby, at any time during the negotiations of this settlement of your individual liability, did you either directly or through Mr. Ire-

land or anybody else promise Mr. Phillips something for his own account or his own benefit?

"The Witness: No, sir, never."

When Mr. Graubard was on the stand he was asked:

"Q. Did Mr. Phillips ever tell you that as of the fall of 1959 he had a meeting of the minds, an understanding, with Mr. Ireland that if a tripartite settlement was to be consummated, he, Phillips, would have a directorship in IDS?"

"A. No, sir."

In response to questioning by the Court, Mr. Newton testified:

"The Court: You were right in the middle of all this. Was there any intent and understanding that Mr. Phillips would be one of the directors of IDS at this time?

"The Witness: No, sir.

. . .

"The Court: You got no impression that there was such an understanding?

"The Witness: No. . . ."

Again with reference to the matter of a secret understanding between Kirby and Phillips, the Court asked Mr. Teitelbaum:

[fol. 3104] "The Court: As of this date of February 1, 1960, did you have any feeling that there was any understanding that Mr. Randolph Phillips was to go on the board of IDS?

"The Witness: Most certainly not, sir. Everything I knew was to the contrary."

Relative to the discussions which led to the ultimate settlement in the Fall of 1959, Mr. Daly, in response to questions put to him by the Court, testified:

"The Court: Anywhere along in those discussions did you get the impression that there was any agreement either express or implied that Mr. Phillips was to go on the board of IDS or some other company?

"The Witness: No, sir.

"The Court: Did you get any impression anywhere along the line that Mr. Kirby had made some implied commitment to Mr. Phillips to give him a position of stature and compensation?

"The Witness: No, sir."

It was the events after the approval of the settlement which lead the plaintiff to urge that the Court must draw inferences that there had been a pre-existing understanding for such bribe to Phillips.

Shortly after the settlement had been approved by the New York Supreme Court discussions did take place as to whether Phillips should be placed on the board of IDS. Early in January of 1960 Phillips came to the office of [fol. 3105] Alleghany Corporation and asked Kirby to consider putting him on the board of IDS. Kirby answered that if he did anything like that he was sure a lot of people would think he ought to have his head examined. At or about that time there was a threat of a proxy fight at Alleghany Corporation posed by Mr. Sonnabend and Mrs. Young in opposition to Mr. Kirby. In a conference as to Phillips' future position in the Alleghany picture, Mr. Newton indicated to Mr. Kirby's associate that he thought Phillips undoubtedly irritated people but that he was a good person to have on your side in a proxy fight, and that Phillips had told him that while he would prefer to be aligned with Kirby's forces in the proxy fight, if he were not so aligned he would consider an offer from Sonnabend.

Due to the return of control of IDS to Alleghany Corporation it became necessary to consider the personnel of the board of IDS. That company had previously been controlled by the Murchison Brothers. To carry the return of control into effect it would be necessary to replace cer-

tain directors then on the board with directors primarily representative of Alleghany Corporation.

Kirby testified that he began thinking about the fact that Alleghany, which had controlled IDS for some five years, [fol. 3106] had now been out of control for five years. After that absence of control he felt that he ought to do something to find out what had gone on at IDS. He therefore had a discussion with his attorney, Mr. Newton, in which the subject of Phillips being nominated to the IDS board was discussed. Kirby testified that he thought it was about time he found out what was going on under the Murchison management because they had been awarding brokerage business on a favoritism basis and there was no telling what else they had been doing. Newton agreed with Kirby. He had been telling Kirby for some time that he should ascertain the facts because of certain ugly rumors. He urged an investigation. Kirby asked Newton if he would go to Minneapolis to make the investigation but Newton said he had too many commitments to do that and would not have the necessary authority simply as counsel for Alleghany. Kirby then asked if Phillips could make the investigation and Newton agreed that Phillips would be well qualified, but pointed out that he would have to have some authority to make an investigation. Kirby then said that if Phillips should be made an IDS director that would give him the authority to get the information needed. Also, Kirby had previously participated in a meeting at which Newton discussed the advisability of having Phillips on [fol. 3107] his side in the event he became involved in a proxy contest.

We have, therefore, a situation where after the settlement had been consummated and the control of IDS had been returned to Alleghany Corporation there was some doubt as to whether Alleghany was in a position effectively to exercise that control and to find out what had happened during the period of Murchison control. There was also the threat of a proxy fight in Alleghany Corporation.

On April 8, 1960, Brussel wrote to Newton pointing out that there were some doubts as to whether the integrity and spirit of the settlement of December 29, 1959, whereby control of IDS was to be returned to Alleghany, was going to be compromised by developments which had taken place since that date. Brussel requested on behalf of his firm, and on behalf of Graubard, that "Alleghany Corporation include Mr. Randolph Phillips among its nominees to the IDS board at the 1960 annual meeting of stockholders."

Mr. Kirby apparently decided that taking all the factors into consideration it would be desirable to place Phillips on the board of IDS. This conclusion on his part does not seem to be improper. He wanted the assistance of Phillips [fol. 3108] in the event of a proxy fight in Alleghany Corporation. He realized that the minority stockholders who had carried on the derivative litigation for years were suspicious as to whether Alleghany had actually gained control of IDS. The one way to lay any such suspicions to rest would be to put a representative of these stockholders on the board of IDS. There was no doubt that Mr. Kirby did not like Phillips. Phillips and his associates had bedeviled him with expensive litigation; they had made charges against him which were serious. If peace were to be maintained it was probably necessary that Kirby see to it that those who had brought the litigation would have no suspicions as to the integrity of the settlement. As early as December 22, 1959, while the settlement negotiations were going on, Kirby advised his close associate Eppler that he thought he would be able to settle the litigation but said, "of course, now I may have to put Phillips on the IDS board." Phillips, undoubtedly, either from Brussel, or elsewhere, received word that he was being urged for that position on the IDS board. On April 18, 1960 he wrote to Kirby and said that if he were made a director of IDS he was not going to show favoritism to anybody and that the Murchisons were entitled to as much respect from him as a director as anybody else.

[fol. 3109] Mr. Kirby finally decided that Phillips would be a good nominee for director of IDS. He wrote Phillips a letter to that effect dated April 15, 1960 which Phillips did not receive for several days thereafter. In the letter to Phillips Mr. Kirby said:

> "It is with some misgivings that I have put you on the 1960 Investor's Diversified Services slate. Not because of any lack of confidence in you on my part, but because, whether you realize it or not, you are a *very controversial* figure. It, therefore, behooves you to step carefully and to remember that you are on trial, at least until you have gained the confidence, respect and, yes, friendship, if possible, of those who you know are antagonistic to your going on the Board. I know you will try hard to accomplish this, if only to justify my confidence."

The nominees of Alleghany Corporation for the IDS board, including Phillips, were elected on April 19, 1960. This matter was reported in the press.

The Court concludes that the plaintiff has failed to establish that there was any secret understanding between Kirby and Ireland and Phillips whereby Phillips was to gain a position of status and compensation in return for assisting in securing a settlement satisfactory to Kirby. The evidence was all completely to the contrary The inferences [fol. 3110] which plaintiff seeks to draw from the fact that Phillips after became a director of IDS do not warrant the conclusion that this was pursuant to a pre-existing agreement. Plaintiff's position is a typical example of the logical fallacy of *post hoc ergo propter hoc.*

Plaintiff had the burden of proof of establishing that there was fraud permeating the settlement and that this fraud was a breach of a fiduciary obligation of Phillips to the minority stockholders in that he made a secret agreement for his own benefit which was not revealed to the Court. Plaintiff has failed completely to establish this as a matter of fact.

This brings us to the second point urged by the plaintiff:

(2) Was There Such Fraud as Would Require Setting Aside of the Order of the New York State Supreme Court and the Release Granted Pursuant Thereto to Kirby by Reason of the Failure of Kirby to Adduce Before the State Court or Its Referee Certain Facts Material to an Evaluation of Kirby's Liability on Claims Arising Out of the 1950 Exchange Transaction?

Plaintiff alleges in Paragraph 39 of the amended and supplemental complaint that Kirby failed to adduce or cause to be adduced before the Referee, the Special Master and the Courts, certain facts relating to the 1950 Exchange [fol. 3111] Transaction. Plaintiff alleges that by reason thereof the order of the New York Supreme Court confirming the report of the Referee was the result of fraud.

There was no indication that Mr. Kirby had ever been subpoenaed or required to produce any records before the Referee. He was not a witness before the Referee. He had not been served in the *Zenn* action. The plaintiff contends, in effect, that Kirby was under an affirmative duty to volunteer to come forward with facts in his possession or under his control relative to IDS, even though he was not asked for them by any of the parties to the hearing before the Referee. This is not a question of Kirby altering or concealing any facts, but rather a question of whether he was under an affirmative duty to present facts which might have a bearing upon his liability.

The issue before the Referee was whether or not the proposed settlement of the claims asserted in *Zenn* v. *Anzalone* was fair and reasonable. For the purpose of making that determination the Referee necessarily inquired into the merits of the various claims asserted in the action, including that of the 1950 Exchange Transaction. The Referee's inquiry was, of course, solely for the purpose of [fol. 3112] determining the reasonableness of the settlement, not to try the claim as such.

The objectants to the settlement had a full opportunity to demand and require any papers which they thought ma-

terial in connection with this hearing. That they took this obligation seriously was shown. They served a subpoena duces tecum on Alleghany Corporation in response to which more than 28 files of that corporation were produced which Graubard, counsel for the objectant Rosen, and his staff examined for over 64 man-hours. Graubard was satisfied that Alleghany had produced everything in its files called for by the subpoena. Robert R. Young's files relating to IDS were also produced and similarly examined. He testified at length before the Referee with respect to the 1950 Exchange Transaction. Robert Purcell, a director of IDS from the time of its acquisition by Alleghany in 1949 and a former president and then Chairman of the Board of IDS, responding to a subpoena duces tecum served by Graubard, produced a large number of documents. He also testified at length. The hearing on the settlement was well described by the Referee in his report as in the nature of an adversary proceeding. In such a proceeding the proponents of the settlement of course had the burden of establishing the fairness of the settlement. The objectants contested the [fol. 3113] fairness of the settlement. They had the full discovery proceedings of the State Court at their disposal in establishing their position.

Now Alleghany Corporation, which was one of the proponents of the settlement, comes in and says that Kirby failed in a duty because he did not come forward and volunteer certain information for which he was not asked in the course of the hearing on the settlement. The documents which it is contending Kirby should have produced were documents found in the course of discovery proceedings in *this* action which were in the files of IDS or in the files of Kirby at his home in New Jersey. Whether any of them are of such materiality that they would have affected the conclusion of the Referee will be discussed later in this opinion. That is an issue of fact.

Before we get to that, however, there is a fundamental question of law as to whether under the circumstances it would be sufficient fraud to warrant setting aside the judg-

ment and release for Kirby to have failed to volunteer and come forward with this material at the hearing before the Referee. This is an issue of law.

This raises the issue as to whether the fraud alleged by the plaintiff is that which is denominated by the law as "extrinsic" or "intrinsic."

[fol. 3114] In cases seeking to set aside the judgment of another Court, or to prevent a party from pleading that judgment as *res judicata*, the Courts have drawn a distinction between extrinsic fraud and intrinsic fraud. The distinguishing between extrinsic and intrinsic fraud is an attempt by the Courts to reconcile two competing considerations—justice to the parties and a finality of litigation. See *United States* v. *Throckmorton*, 98 U.S. 61, at pp. 68-9. The distinction between extrinsic and intrinsic fraud was well expressed by Judge Phillips in *Chisholm* v. *House*, 160 F.2d 632, at p. 643 (10th Cir. 1947). He said:

> ". . . Fraud is regarded as extrinsic or collateral where it prevents a party from having a trial or from presenting his cause of action or his defense, or induces him to withdraw a defense, or operates upon matters pertaining not to the judgment itself, but to the manner in which it was procured. Where, however, the judgment was founded on a fraudulent instrument or perjured evidence, or the fraudulent acts pertained to an issue involved in the original action and litigated therein, the fraud is regarded as intrinsic."

[fol. 3115] The distinction between extrinsic and intrinsic fraud is important because New York allows collateral attack upon any judgment only when extrinsic fraud is established. In *Crouse* v. *McVickar*, 207 N.Y. 213, 218 (1912) the Court said "fraud for which a judgment can be impeached must be in some matter other than the issue in controversy in the action." See *Jacobowitz* v. *Metsellar*, 268 N.Y. 130 (1935); *Chenu* v. *Board of Trustees, Police Pension Fund*, 212 N.Y.S.2d 818 (App. Div. 1st Dep't 1961); *Cohen* v. *Randall*, 137 F.2d 441 (2d Cir. 1943), *cert. denied*, 320 U.S. 796 (1943).

A federal court sitting in a diversity of citizenship case is obligated to adhere to state substantive law.* *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938); *Guaranty Trust Co. of New York* v. *York*, 326 U.S. 99 (1945).

In 7 Moore, *Federal Practice* ¶ 60.37[3] (2d ed.), page 634, the author writes, "a federal court sitting in another state, which allows relief only where the fraud is extrinsic, should not grant relief from a judgment of that state on the [fol. 3116] basis of intrinsic fraud . . . Certainly the policy of Erie-Tompkins demands this where the state court judgment was rendered in a case involving only non-federal matters; and, further, the policy is in accord with that underlying res judicata and full faith and credit."

Reiter v. *Universal Marion Corporation*, 299 F.2d 449 (D.C. Cir. 1962) is closely in point. A derivative stockholders' suit was instituted in the district court for the District of Columbia but was not reached for trial until a similar suit against the same defendant in the New York Supreme Court had been settled and judicially approved. The plaintiff sought to attack collaterally the New York settlement by alleging fraud because of the failure of the corporate directors to disclose material facts bearing on the fairness of the settlement. The Court of Appeals in affirming the dismissal of the suit said:

> ". . . But regardless of what the true reasons for the acquisition may have been, we are bound by the New York law on the matter, and it seems clear that the New York courts would not permit a collateral attack upon a settlement and resulting judgment on the basis appellants urge. See Crouse v. McVickar, 207 N.Y. 213, 100 N.E. 697, 45 L.R.A., N.S., 1159 (1912); Chenu v.

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* A dictum somewhat to the contrary on the issue of applying the rule of extrinsic fraud appears in *Griffith* v. *Bank of New York*, 147 F.2d 899 (2d Cir. 1945). The precise issue was not squarely before the court since it held the fraud in that case to be extrinsic and thus capable of collateral attack by both New York and federal law. The cases relied on by the court were pre-*Erie* cases.

Board of Trustees, 12 App. Div. 2d 422, 212 N.Y.S.2d 818 (1961)." 299 F.2d 449, at page 453.

[fol. 3117] Similarly, in *O'Boyle* v. *Bevil*, 259 F.2d 506 (5th Cir. 1958) the Court looked to the law of Texas to determine the permissible scope of collateral attack on a judgment rendered by a court of that state. Judge Tuttle, speaking for the Court, stated:

> "... Questions as to the setting aside of judgments are difficult at best. This difficulty is increased when attack is made in a federal court on a state judgment. There is one principle, however, that stands out clearly in this area of controversy. That is that in diversity cases, a federal court may set aside a state court judgment for equitable grounds that are recognized by the state as a basis for such action. When, as is true in Texas, a judgment can be set aside for want of jurisdiction or for fraud, the federal court, exercising its equity jurisdiction, can act similarly in a diversity case." 259 F.2d 506, at pp. 511-12.

The Court concludes that the only basis upon which the judgment of the New York State Court approving the *Zenn* settlement could be disregarded would be if extrinsic fraud were established.

The alleged fraud upon which plaintiff relies in this case cannot be denominated extrinsic fraud. Plaintiff seems to contend that Kirby was under an obligation to establish the bona fides of the 1950 Exchange Transaction. If there had been a trial on this issue that undoubtedly would have been [fol. 3118] true. In establishing the sufficiency of the settlement the Referee and the Court also had to keep in mind the question of Kirby's knowledge of the underlying facts. If Kirby had testified at the hearing before the Referee and had testified falsely, or had produced false documents, the fraud would be denominated as intrinsic and would not be subject to collateral attack. It is difficult to understand how this can be changed to extrinsic fraud by failure to produce

documents or a failure to testify. Mere failure to produce evidence before the Referee or the Court, which might have been useful in determining the matter in issue is not extrinsic fraud. This is well established in the New York State Courts.

Thus, in *In Re Adoption of Brundage*, 134 N.Y.S.2d 703 (Sup. Ct., Or. Cy. 1954) *aff'd*, 143 N.Y.S.2d 611, *appeal denied*, 144 N.Y.S.2d 921 (2d Dep't 1955), a prior adoption proceeding was challenged because the deceased foster parent had withheld information from the Court. The Court held:

> " . . . [T]he failure of the judge to thereby become informed of certain material facts which would have a bearing upon the question of whether or not the adoption was to be confirmed by him may not be successfully urged as a ground for the setting aside of the order of adoption. The general rule is that the authority to set aside a judgment or order of the court for fraud is limited to cases of fraud which are ex- [fol. 3119] trinsic and collateral to the matters in issue. The mere failure of a party to disclose to a court matters pertinent to the issues which would defeat his claim is not such extrinsic fraud as will require the setting aside of a judgment in favor of the claim." 134 N.Y.S.2d 703, at pp. 709-10.

Reiter v. *Universal Marion Corporation, supra*, applying New York law, reached the same conclusion:

> ". . . . Appellants' most substantial point is that defendant-appellees Rittmaster and Mullaney, directors who testified at the New York hearing, did not reveal that Merritt Company 'or its designee' had a contractual right to buy the Savin shares at a lower price than Universal Marion paid. . . . [I]t seems clear that the New York courts would not permit a collateral attack upon a settlement and resulting judgment on the basis appellants urge. . . . " 299 F.2d 449, at p. 453.

The plaintiff herein cannot collaterally attack the settlement approved of by Mr. Justice McGivern. The conduct of Kirby, if fraudulent, was not extrinsic fraud as defined by New York law. It is not a judgment which could be collaterally attacked in a New York court and therefore a collateral attack must fail in this Court as well.

[fol. 3120] The plaintiff was allowed to introduce in evidence documents discovered by it in the files of Mr. Kirby and IDS. Most of them were produced from the files of IDS pursuant to discovery proceedings in the instant action. The Court has considered these documents, together with the documents which were actually introduced before the Referee in the *Zenn* settlement hearings. It does not appear to the Court that the documents upon which plaintiff now relies were of such significance that they would warrant the Court upsetting the decision of the State court in any event.

Essentially the documents relied upon by the plaintiff are accounting documents or actuarial documents relating to a projection of earnings. Thus plaintiff says at page 135 of its brief:

> "The cornerstone of plaintiff's claim of non-disclosure is the area of projection documents that were known to Kirby to Purcell, to Anzalone, to Shipman and readily available at IDS throughout the entire period from the acquisition by Alleghany onward."

However, the fact that there were such projections was well known to the attorneys in the *Zenn* settlement hearings. Mr. Graubard, who represented the objecting stockholders at the settlement hearings, was asked:

> [fol. 3121] "Q. Do you have any recollection now that any projections or forecasts were furnished to you in connection with those hearings?
>
> A. Yes, sir. I believe that the record will show that there were forecasts, that my briefs to the Referee and Judge McGivern lay stress upon these forecasts,

and I have a particular recollection indeed of mention of these forecasts in correspondence between Mr. Purcell and Mr. Young."

While undoubtedly the accounting and actuarial evidence was the type of evidence that might have been introduced in the hearings if counsel had had it, nevertheless the Court cannot conclude that the failure to have such evidence or to produce it was of such significance that it would have caused the Referee to reach a different conclusion.

Plaintiff urges at great length the proposition that a director-defendant has a duty to produce all the facts within his knowledge if he seeks to get a judgment relieving himself from responsibility to his corporation. This may be true. This is his burden of proving to the satisfaction of the Court that a settlement is fair and reasonable. Plaintiff, however, in this case, then transposes the burden of proof into a duty to adduce evidence against oneself. [fol. 3122] Having the burden of proof means only that the defendants had the burden of affirmatively establishing the reasonableness of the settlement; it does not mean that they had the duty of helping the objectants to the settlement prove it was unreasonable.

In the very nature of things the argument of the plaintiff on the failure to produce amounts to nothing more than that plaintiff has some after-discovered evidence which was not asked for at the hearing before the Referee or produced before the Referee. After-discovered evidence may be the basis for seeking a new trial. It is not a basis for collaterally attacking a judgment rendered after trial or a release given pursuant to the judgment.

The Court concludes that plaintiff has failed to establish that defendant Kirby committed a fraud upon the State court or its Referee in failing to produce documents at the hearings before the Referee which were not called for at the hearings and most of which were not in his possession but were in the possession of IDS.

[fol. 3123] (3) May the Court Direct Kirby, Ireland and Fred M. Kirby to Reimburse Alleghany for Legal Fees and Expenses Incurred by It?

On October 7, 1960 the Executive Committee of the Board of Directors of Alleghany approved a resolution authorizing "the appropriate officers of the Corporation [to] take all steps deemed by them to be necessary or proper to contest and defend the Corporation against the following lawsuits in which this Corporation is a party defendant. . . . " The instant suit is one of the three denominated in the resolution. The reason for that resolution is contained in its final paragraph which states that "the institution and prosecution of these three lawsuits is against the judgment and policy of the Corporation as evidenced by the action of the Board of Directors of the Corporation taken on December 29, 1959, approving and ratifying the settlements which these three lawsuits seek to upset, and is against the interests of the Corporation." Among those approving the resolution were Allan Kirby and Fred M. Kirby.

The precise issue raised by this resolution is contained in the "Proposed Statement of Issues" submitted by the plaintiff and adopted by the Court. It reads as follows:

> [fol. 3124] "9. Where Alleghany has been caused by Kirby and Fred M. Kirby to expend monies in payment of legal fees and disbursements on Kirby's behalf and that of others than Alleghany and failed to disclose said payments to the shareholders of Alleghany, should Kirby and Fred M. Kirby be compelled to repay said sums to Alleghany?"

New York allows a corporation to expend funds in defense of a derivative action presumptively brought in its behalf when some interest of the corporation is threatened. The rule was laid down in *Godley* v. *Crandall & Co.*, 168 N.Y.S. 251 (App. Div. 1st Dep't 1917), *aff'd*, 227 N.Y. 656 (1920), where the Court said:

" . . . Ordinarily, therefore, there will be no occasion to spend considerable sums of the corporation's money to defend against an action brought for its benefit. Cases may arise, however, where the interests of the corporation are injuriously threatened by such a suit, or by some incidental relief sought therein. In such a case the directors may properly employ and pay counsel in behalf of the corporation, assuming the burden, if the expenditure is questioned, of showing that some interest of the corporation was in fact threatened, and that, for that reason, the expenditure was justified. . . . " At p. 254.

It appears obvious that Alleghany had an interest in defending the settlement by which it had received over $1,100,000. It cannot be said that the interest of the corporation was not threatened by the instant suit.

[fol. 3125] However, even more important is that no proof was offered by the plaintiff as to the amount of fees expended by it, to whom these were paid, for what services they were paid and whether these were solely for protecting the interests of Alleghany or for protecting the interests of the individual defendants.

This is a suit by Alleghany. Alleghany obviously had the facts within its control. No proof was offered by its attorneys that fees were paid by it for the benefit of the individual defendants. The mere fact that it may have paid fees to protect *its* interest in the litigation does not mean that the individual defendants are under a legal obligation to reimburse it for those fees.

There has been a complete lack of proof sufficient to warrant any direction that defendants Kirby, Ireland and Fred M. Kirby reimburse Alleghany for legal fees and expenses.

Conclusion

As is shown by the foregoing findings of fact and conclusions of law, plaintiff completely and utterly failed to establish the causes of action which it has asserted.

[fol. 3126] Judgment shall be entered for the defendants dismissing the complaint, together with the costs and disbursements of the action.

Dated: New York, N. Y., May 28, 1963.

Archie O. Dawson, U. S. D. J.

[fol. 3127]

In the United States District Court

For the Southern District of New York

60 Civ 3511

Alleghany Corporation, on behalf of themselves and all other stockholders similarly situated, Plaintiffs,

—vs.—

Allan P. Kirby, Randolph Phillips, Charles T. Ireland, Jr., and Fred M. Kirby, Defendants.

Judgment—June 5, 1963

The issues in the above entitled proceeding having been brought on regularly for trial before the Honorable Archie O. Dawson, United States District Judge on April 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 1963, and the Court having handed down its opinion in favor of the defendants, on May 28, 1963, it is

Adjudged: That the defendants have judgment against the plaintiff dismissing the complaint with costs and disbursements.

Dated: New York, N. Y., June 5, 1963.

James E. Valeche, Clerk.

Approved: 6/5/63.
Archie O. Dawson, U. S. D. J.

[File endorsement omitted]

[fol. 3129]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 173—September Term, 1963

Argued December 2, 1963

Docket No. 28,397

ALLEGHANY CORPORATION, Plaintiff-Appellant,

—v.—

ALLAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant.

Before:

Moore, Friendly and Kaufman, Circuit Judges.

Appeal from so much of a judgment of the United States District Court for the Southern District of New York, Archie O. Dawson, *Judge*, 218 F. Supp. 164 (1963), as dismissed the complaint against defendants, Allan P. Kirby, Charles T. Ireland, Jr., and Fred M. Kirby after a trial before the court without a jury.

Affirmed.

[fol. 3130] Stuart N. Updike, New York, N. Y. (Townley, Updike, Carter & Rogers, New York, N. Y., on the brief; James B. Donovan, Lee W. Meyer, Ronald S. Daniels, Richard J. Barnes, Watters & Donovan, New York, N. Y., of counsel), for Plaintiff-Appellant.

Granville Whittlesey, Jr., New York, N. Y. (Donovan Leisure Newton & Irvine, New York, N. Y., on the brief; Roy W. McDonald, Robert M. Loeffler, Walter L. Stratton, John J. McCann, Ben Vinar, of counsel), for Defendants-Appellees.

OPINION—May 19, 1964

Moore, Circuit Judge:

For some ten years, the subject matter of the lawsuit now on appeal has been before the New York State and federal courts. The particular aspect now presented is an appeal from a judgment in an action in the district court wherein plaintiff (appellant), Alleghany Corporation, sought to set aside, as obtained by fraud, a settlement of stockholders' derivative actions. *Alleghany Corp.* v. *Kirby*, 218 F. Supp. 164 (S. D. N. Y. 1963). This appeal is further limited to the claim that the settlement was obtained by defendant (appellee) Allan P. Kirby, as a result of his failure voluntarily to disclose upon the settlement certain facts, essential to a proper adjudication of the fairness and adequacy thereof, alleged to have been known to him at that time. The district court found adversely to appellant.

The transaction giving rise to the many suits originated on December 6, 1949. On that date four officers and directors, including defendant Kirby, voted illegally (so alleges plaintiff) to give themselves an opportunity to exchange Alleghany preferred stock held by them for Alleghany's [fol. 3131] entire portfolio holdings of 48,225.61 shares of Class A stock of Investors Diversified Services, Inc. (IDS). Pursuant to a December 6, 1949 resolution authorizing an exchange, Kirby tendered his Alleghany preferred stock to Alleghany and Alleghany, in turn, transferred 24,062 shares of IDS stock to Kirby at a price of $8.1453 per share.

By 1954 the price of the IDS stock had advanced to some $200 a share. At such a price Kirby alone had profited at the expense of Alleghany in an amount in excess of $4,500,000. Champions on behalf of Alleghany did not long remain on the sidelines and soon (1954-55) many derivative suits were commenced in both state and federal courts. Other similar suits were brought in the federal court. In accordance with a practice which had developed in the State court to avoid complete chaos amongst the many would-be champions, under the caption of *Zenn et al.* v. *Anzalone*

et al., No. 72244/1954, Sup. Ct., N. Y. Co. (referred to as the *Zenn* suits), the ten suits were consolidated and a general counsel (Abraham L. Pomerantz of the firm of Pomerantz, Levy & Haudek) was designated for the plaintiffs in the state and federal suits. Such counsel and his firm were most skilled and experienced (at least for over twenty years) in ferreting out fraud on the part of directors alleged to have been more mindful of serving their own interests than those of the corporations whose interests they should have been serving.* Naturally the complainants in the various suits turned their spotlights on the IDS stock [fol. 3132] exchange and the fact that the beneficiaries thereof knew of, or were in a position to know of, the enormous prospective increase in earnings of IDS.

More specifically, the consolidated amended complaint (First Cause of Action) alleged that Kirby, Robert P. Young and other named co-defendants were engaged in a conspiracy "to enable defendants Young and Kirby to enrich themselves at the expense of Alleghany"; that the IDS stock exchange was to be made at Alleghany's cost or the market price determined as of the final exchange date whichever was higher and "was to be conditional upon ratification by Alleghany's common stockholders at their annual meeting on May 3, 1950"; that the proxy statement was "false and misleading with respect to material facts and omitted to state material facts necessary to make the statements therein not false or misleading," in part, including a failure to reveal not only an actual increase in earnings for the first three months of 1950 (i.e., $2.17 per IDS

* In *Heddendorf* v. *Goldfine*, 167 F. Supp. 915, 920 (D. Mass. 1958), the court said:

> "Moreover, Mr. Pomerantz's judgment as to the value of so much of the claims as fall within the first four categories of the complaint is a judgment not only based on painstaking preparation but also reflecting an almost unparalleled experience in this type of litigation. * * * His support of the compromise embodies the pragmatism of a man whose shrewdness few antagonists have ever doubted."

share, projected as $8.68 on an annual basis) but also a trend to further improvements "foreseeable to and foreseen by the individual defendants"; that 1950 earnings amounted to $20.76 a share; that the earnings trend was reflected in a spectacular increase in market value (also "foreseeable to and foreseen by") to $28, $37.75, $89.50, $100 at the end of the respective years 1950-53 and about $200 at the date of the complaint; that even at the date of the exchange (May 15, 1950) Kirby failed to pay the required consideration in that he paid $148,273.79 less than called for by the respective market prices of Alleghany preferred Series A and IDS stock; and that as a result of such fraud both the exchange and the purported stockholder ratification were void.* Recision or the difference [fol. 3133] in value between the price paid and the real worth of the IDS stock was demanded. Kirby, although named as a defendant in the state court suits, actually was not served with process therein.

As not unusual in this type of suit, settlement negotiations soon began and in July 1955 a settlement stipulation in the *Zenn* suits was drafted. Alleghany thereupon moved in the New York Supreme Court for approval of the settlement. A Referee was appointed by the court to inquire on the merits into the fairness and adequacy thereof. Under New York practice, notice of the terms of the proposed settlement was sent to all stockholders and hearings commencing in September 1955 were held before the Referee.

In February 1955 a suit had been brought in the federal court in New York by another group of stockholders entitled *Breswick* v. *Briggs*, Civ. No. 98-371, S. D. N. Y. Although some of the charges made were similar to those in the *Zenn* suits, the 1950 IDS stock exchange was not placed in issue.

The *Breswick* plaintiffs had not been participants in the *Zenn* settlement negotiations. For this reason and lest

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* Similar charges were made in the "Second Count" of the consolidated amended complaint in the federal court *Zenn* suit, Civ. No. 92-205, S. D. N. Y.

they be bound by any settlement therein, they sought and obtained in October 1955 a federal court injunction against the interposition of any defense based upon any settlement agreement not negotiated with them.

Returning to the hearings before the Referee in the *Zenn* action, there was vigorous opposition to the settlement. Many of the arguments now advanced were urged as reasons for rejecting the settlement. Counsel (Seymour Graubard of Graubard & Moskovitz) for one objectant (Rosen) in particular worked in close association with counsel in *Breswick*. The statistics as to the nature and duration of the hearing are revealing. Eighteen witnesses were called, some 480 exhibits introduced, over 4,600 pages of testimony were taken and twenty-two law firms and at- [fol. 3134] torneys appeared. The hearing on the merits of the settlement was, in effect, a hearing on the merits of the suits.

The primary issue in the first cause of action in the *Zenn* suits was whether Kirby knew or should have known that the IDS stock, which he obviously had acquired from Alleghany in a self-dealing transaction, was worth far more than he paid for it. Counsel for Alleghany, to establish such knowledge and a logical imputation thereof, sought to and did by pre-trial procedures delve into the files of Alleghany and IDS for proof.

The Referee characterized the hearings as "truly an adversary proceeding, more nearly resembling a trial on the merits than a hearing on a proposed settlement * * *" He accurately perceived the principal issue, namely, Alleghany's claim that the defendants had failed adequately to reveal to the stockholders "the alleged sharp upward turn in the profits of IDS and the further improvement of future earnings which it is claimed was foreseen by Young, Kirby and Purcell."

Before considering the facts which appellant claims were not before the Referee, the alleged concealment of which forms the basis of its argument that the settlement was tainted with fraud, it would be well to review briefly certain

items of proof before the Referee which bore upon Kirby's then (December 1949 through May 1950) knowledge or which might reasonably have put him on notice of substantially increasing earnings.

In February 1950, Robert W. Purcell had written Young and Kirby advising them of a net income before home office expenses forecast for the IDS mortgage department alone of $5,720,000 for 1950 in contrast with $2,277,000 for 1949. Kirby was told that this estimate was said to be "very conservative" and that mortgage department "operations promise to show continued substantial earnings." Had Kirby inquired at the end of the first quarter of 1950 [fol. 3135] as to net income, he would have learned of an income figure of $639,040 instead of a corresponding 1949 first quarter loss of $1,298. Purcell's optimism for 1950 was justified by a net income for 1950 of $6,454,411 instead of $1,365,485 for 1949. In addition, the Referee had the actual net income figures for the years 1949-1953 as contained in the IDS annual reports which showed a steady increase from $374,355 in 1948 to $13,229,310 in 1953.

During the trial in the district court, Alleghany caused to be produced certain documents which were not before the Referee and claimed that Kirby's failure to adduce them on the settlement hearings prevented the Referee from properly evaluating the fairness and adequacy of the proposed settlement under consideration. Of the "non-disclosed" documents which Alleghany claims were of critical significance, it stresses the following:

A. *The Froggatt Report of April 29, 1949.*

This report was addressed to the IDS Board of Directors and was primarily concerned with a valuation of IDS certificates in force as of December 31, 1948. In addition, a prognostication was made for the years 1949-53 of net income available for improving certificate reserves before profit or loss on sale of investments or income taxes. Kirby apparently had received this report in August 1949. It was

mentioned in an exhibit introduced before the Referee and was later found in Alleghany and IDS files.

B. *An IDS Projection of Net Income for the Years 1949-53 Before Profit or Loss From Sales of Investments and Income Taxes.*

There was no evidence that Kirby had received these figures.

[fol. 3136] C. *An IDS Projection of Net Income for 1950 Through 1954 and a Projection for 1950 by Months.*

These projections produced from the IDS files in discovery proceedings were not admitted in evidence by the district court because there was no evidence that Kirby had ever had them in his possession or that he knew of them. Nor was there any showing that counsel in *Zenn* had been in any way precluded either in pre-trial or in the settlement hearings from seeking any and all papers in the possession of IDS. To the contrary, there was proof that during the hearings before the Referee (1954-1958) documents in the IDS files were available upon request.

D. *The Purcell Letter to Young Dated July 27, 1954, With Enclosures.*

On July 27, 1954, Purcell sent to Young a letter from Waag, Vice-President and Controller of IDS, with certain documents obtained from Waag. The statement entitled "Comments on Operations December 1950" compares IDS' financial situation as of December 31, 1950 with the same date in 1949. 1950 income is stated as $6,142,232 in contrast to 1949 income of $1,078,272. However, this statement must have been prepared subsequent to December 31, 1950, and hence not available prior to the consummation of the exchange. The district court excluded this exhibit. Another statement disclosed net income for 1949 and 1950 by quarters. Although excluded by the district court, this statement had been introduced in the *Zenn* hearings and showed

an increase in net income from $1,365,485 in 1949 to $6,454,411 in 1950. The third statement set forth a 1950 quarterly analysis of some of the larger housing project items in which IDS had participated. This statement, although not received below, had also been admitted in the *Zenn* hearings.

[fol. 3137] In summary, most of the allegedly "non-disclosed" documents came from Alleghany or IDS files. In some instances, copies were produced from Kirby's files. The fact that IDS prepared projections could not have been unknown to Alleghany counsel in *Zenn* because the April 7, 1949 Shipman report contained a ten-year (1947-1956) IDS earnings projection. Other documents did not come into existence or into Kirby's possession until after the stock exchange had been consummated. As to the documents which Kirby received, he was chargeable with all the legal consequences of such information; as to those excluded by the district court on the ground that there was no evidence that Kirby had seen them, there is no basis for holding this finding of fact to be clearly erroneous. Furthermore, the district court had in the record before him evidence virtually identical to that contained in the documents excluded by him, particularly with relation to compilations of projected earnings. The earnings projections would undoubtedly have been useful in cross-examining Kirby before the Referee as to the extent of his belief with respect to future earnings. However, Kirby was not called as a witness and, therefore, there was no occasion to cross-examine.

As a result of the federal court's suggestion in *Breswick*, the defendants in *Breswick*, including Kirby, engaged in their own settlement negotiations. These were productive of an increase in the *Zenn* offer, from $700,000 cash to $1,000,000 plus certain other benefits. However, the *Breswick* plaintiffs still were not satisfied. The *Breswick* defendants then moved to vacate the injunction which for practical purposes was standing in the way of the *Zenn* settlement. The federal court thereupon appointed the

Zenn Referee as a Special Master to hear and report on the good faith of the Breswick settlement proposal. Hearings were held in October and November 1956 and 675 pages of testimony were taken.

[fol. 3138] In June 1958 the Referee reopened the *Zenn* State court hearings to receive the increased offer and in November 1958 handed down his report of some 125 pages approving the settlement. Thereafter exceptions to the report were filed on behalf of the stockholder Rosen objecting to the settlement. The Referee's report was attacked as ignoring and glossing over the evidence that tended to establish liability. The court was urged to "scrutinize the evidence and examine the law" and then withhold approval of the settlement. In the brief opposing approval, the objectant presented virtually all the arguments now advanced by appellant, namely, (1) the possession of inside knowledge by Kirby and Young that the earnings of IDS would increase approximately 500% for 1950 alone; (2) the illegality of the meeting of December 6, 1949 authorizing the exchange offer; and (3) the failure to disclose material facts to the stockholders and the falsity of facts disclosed in the proxy statement for the meeting of May 3, 1950 at which the exchange was ratified. The law relating to self-dealing on the part of directors, their fiduciary position, the legal effect of inside knowledge, the invalidity of the defenses of ratification and laches because of fraud, was also placed before the court.

In support of these arguments, the objectant had facts, leads and clues from which to draw the conclusion that Kirby knew or should have known of the speculative potential in the IDS shares. From the outset in 1948 when Alleghany was considering the acquisition of the voting and Class A (non-voting) stock of IDS, Kirby, Young and their associates were aware of the IDS financial picture. Kirby desired to be kept fully informed. This desire was fulfilled by oral and written financial reports. Specifically, Kirby was advised (if he did not already know) by Purcell's letter to him and Young dated February 11, 1950,

that there was enough additional mortgage business on [fol. 3139] the IDS books in 1949 to add some $5,500,000 to IDS's 1950 earnings. The prophecies envisioned were soon realized. Even before the stock exchange was consummated in May, 1950, the first quarter earnings of $631,000 against a loss of $223,000 for the corresponding quarter of 1949 were available. And had any counsel desired to inquire of Kirby himself not only as to his then knowledge but as to his state of mind regarding IDS and its future, all legal processes were at their command to make such inquiry. Even forecasts were known to have been made. Graubard in his testimony specifically mentioned forecasts and said that "my briefs to the Referee and Judge McGivern lay stress upon these forecasts." He had "a particular recollection indeed of mention of these forecasts in correspondence between Mr. Purcell and Mr. Young." Furthermore, Graubard argued in *Zenn* that the letter vividly demonstrated that "Purcell was able early in February 1950 to predict with uncanny accuracy the extra five million in mortgage department earnings of IDS for the entire year 1950."

The Supreme Court confirmed the Referee's report, saying in part that "Every proposed settlement in this type of litigation constitutes a compromise in which each of the parties expects to make some surrender, in order to prevent costly and protracted litigation," and concluded that "In sum, after consideration of all of the factors in this case, this court is of the opinion that the original stipulation of settlement herein, as now augmented by the latest subsequent offer of defendants, is fair and reasonable, was negotiated at arms' length, is free from fraud or collusion and is in the best interests of the Alleghany Corporation and its stockholders." *Zenn* v. *Anzalone*, 17 Misc. 2d 897, 898-99, 899-900, 191 N. Y. S. 2d 840, 843, 844 (Sup. Ct. 1954). However, because of the existence of the injunction in the *Breswick* suit in the federal court, the New York court [fol. 3140] directed that no order be entered until the injunction was vacated.

Thereafter, the federal court rejected the report of the Referee (Special Master in *Breswick*) which recommended that the injunction be vacated. At this stage further settlement negotiations were renewed which resulted in an offer by Kirby satisfactory to court and counsel in the *Breswick* suit. A supplemental stipulation of settlement in the *Zenn* action was thereupon executed, providing for the payment by Kirby of $1,100,000. The Young Estate agreed to contribute an additional $900,000 to the basic *Zenn* settlement. Thus, Alleghany received $3,000,000 cash and return of control of IDS to Alleghany by the Murchison Brothers. The federal court injunction was thereupon vacated and towards the end of December 1959 orders of the Supreme Court, New York County, were entered, approving the settlement.

Appellant in this action originally attacked the settlement upon two grounds: (1) that Kirby obtained a favorable settlement for himself in the negotiations of October, November and December 1959 by inducing the defendant Randolph Phillips to betray alleged fiduciary duties to Alleghany for personal benefits promised to him by Kirby, and (2) that Kirby had failed to adduce before the Referee and the state court facts material to a proper evaluation of Kirby's liability on claims arising out of the 1950 IDS stock exchange transaction.

The district court found that appellant had failed completely to establish any fraud in which Kirby and Phillips were involved in connection with the ultimate settlement. No appeal has been taken from this finding. There remains for consideration whether Kirby's alleged failure to produce certain records before the Referee in the state court *Zenn* action under the circumstances provides a basis for a federal court setting aside the settlement and, in effect, [fol. 3141] trying the case *de novo* on the merits despite the settlement.

The theory behind allowing a stockholder to bring a derivative stockholders' action rests upon the belief that

wrongdoing directors will not voluntarily sue themselves or willingly admit their wrongful acts; hence, the right to bring a suit on behalf of the corporation is given to a stockholder. Here there were ten such suits. At this stage, if the defendant directors were fiduciaries, they certainly were not considered as such by the stockholder plaintiffs. They were under attack and entitled to defend themselves by all legal means including the right to require the plaintiffs to prove the charges made. They were, of course, under a duty to respond to all subpoenas, upon proper demand to produce all records in their possession, and to testify if called as witnesses. In the *Zenn* suit, Kirby, although named as a defendant, had not been served. He had not been subpoenaed or served with a notice to produce records in the suit itself or in the proceeding before the Referee. Nor did he testify before the Referee. Control of Alleghany's interests so far as the 1950 IDS stock exchange was concerned was in the hands of competent counsel in the derivative suits on behalf of Alleghany who had available to them all the procedural processes designed for effective pre-trial preparation. Kirby and his co-defendants were in no position to force a settlement upon the *Zenn* plaintiffs. These plaintiffs could have insisted upon a trial. Had they prevailed, the damages according to the theory adopted by the court could have ranged from modest amounts to astronomical figures. But even fraud cases can often be settled. A settlement is the price of peace. There is no prerequisite to the settlement of a fraud case that the defendant must come forwards and confess to all his wrongful acts in connection with the subject matter of the suit. Usually such settlements are accompanied by vigorous [fol. 3142] denials of any fraud whatsoever. Yet the entire thrust of appellant's argument on this point is, in effect, directed to a proposition that Kirby was under some affirmative duty to come forwards voluntarily with facts and documents possibly disclosed for the first time in this suit and of which he may or may not have had knowledge.

There can be no question that the exchange transaction perpetrated by Kirby, Young and Purcell violated fundamental legal principles against self-dealing. If the purchase of IDS was thought to be advantageous for Alleghany over a period of years, there was no justifiable reason for these officers to take this advantage away from the corporation to which they owed fiduciary duties. Nor can there be any question that the proxy statement on the basis of which stockholder ratification was sought was misleading, both in its statements and particularly in its omissions. Thus, the illegality of the exchange, the deception practiced upon the stockholders, the falsity of the Kirby statement as to the date of the exercise of the exchange offer, knowledge, either actual or imputed, of the very substantial increase in IDS earnings, the actual history of the earnings and market price of IDS stock over the period from 1950 to 1955, all these facts were available to the *Zenn* plaintiffs and were the basis of the charges in the stockholders' complaint. To counsel who now represent Alleghany these are "shocking facts," but they probably were equally shocking to the counsel who then were responsible for Alleghany's welfare. Alleghany could have submitted these facts to the court for determination on the merits. Through its representatives, it elected to settle. The requirement that settlements of derivative suits be upon notice to all stockholders and be subject to court scrutiny and approval was a further protection. If the settlement were approved over [fol. 3143] stockholder objection, as here, such stockholders had a right to appeal to the Appellate Division of the Supreme Court and under certain circumstances to the New York Court of Appeals. The objecting stockholder here did not exercise such rights. Having failed to pursue its remedy along normal channels, Alleghany by this action sought to have a federal district court act, in effect, in an appellate capacity to review the decisions of the Referee and the New York Supreme Court. It does this upon its theory that it has discovered certain documents which, if produced before the Referee and Supreme Court would have induced them to have disapproved the settlement.

The wrongful conduct of Kirby and his associates formed the entire basis for the *Zenn* suits. The Referee and the counsel for the complaining stockholders were not kept in ignorance of the facts. If their searches, aided by pre-trial discovery, did not uncover certain documents, if their inquiries fall short of obtaining the documents now brought forth by Alleghany's present counsel, or if in their judgment various documents were not introduced into evidence, these circumstances do not justify the setting aside of a settlement satisfactory to those in charge of the suit in behalf of Alleghany. Particularly is this true in the light of the bitter attack upon the settlement by the objecting stockholder. Were every settlement which had been carefully examined and judicially approved to be vacated at the behest of some subsequent corporate champion who brings forth certain documents which he claims might have so influenced the court that the settlement might not have been approved, there would be no finality to any litigation whether by settlement or by judgment.

By *a fortiori* analogy, the evidence said to have been "non-disclosed" or concealed should at least be of the character required for a new trial, namely, would it "prob- [fol. 3144] ably have produced a different result." *Helene Curtis Inds.* v. *Sales Affiliates,* 131 F. Supp. 119, 120, *aff'd* 233 F. 2d 148 (2d Cir.), *cert. denied,* 352 U. S. 879 (1956). So much stronger should be the evidence of fraud where a collateral attack is being made in a federal court on a state court judgment which the parties thereto did not even challenge by resorting to state appellate proceedings. Examination of the "non-disclosed" documents leads to the conclusion, also reached by the district court, that although the documents would have been admissible had they been offered before the Referee, they do not form a basis for "collaterally attacking a judgment rendered after a trial or a release given pursuant to the judgment." 218 F. Supp. at 186. At most they would have been but cumulative evidence upon the basic issue of Kirby's fraud in acquiring IDS stock at a grossly inadequate price. But this fraud

gave rise to the stockholders' suit and for this fraud he paid the settlement price. It is this price with which Alleghany's present counsel is dissatisfied. However, as long as there are lawyers there will be expressions of honest belief that better settlements could have been obtained had subsequent counsel been in charge initially.

Alleghany makes much of our decision in *United States* v. *Consolidated Laundries Corp.*, 291 F. 2d 563 (2d Cir. 1961), as supporting its argument that it was not for the trial judge here to speculate concerning the effect which the "non-disclosed" documents might have had on the Referee or the Court which confirmed the report. The situation in *Consolidated Laundries* was quite different. Had the documents there been made available to counsel for the defense upon cross-examination, the testimony of the Government's principal witness might have been so discredited or altered that the very basis for the court's factual determinations might have been shaken and changed. [fol. 3145] Here, however, the "non-disclosed" documents merely supply additional evidence that Kirby knew or should have known that the value of the stock he was acquiring was substantially greater than the price paid. The documents would undoubtedly have given the plaintiffs in *Zenn* greater fire power to train upon the enemy but judging by the plaintiffs' and objectant's briefs a rather substantial barrage was laid down. Alleghany's real dissatisfaction must be based upon the Referee's and Supreme Court's decisions. There was certainly enough evidence presented to justify a rejection of the proposed settlement. Yet the stockholders suing on behalf of Alleghany, represented as they were by able counsel, chose settlement. Whatever our thoughts may be as to the merits of the derivative suits and the wisdom of the settlement, these issues are not before us.

Alleghany advances as a legal proposition that Kirby was under an affirmative duty to present facts which might aid his adversaries in establishing his liability. No authority is cited for this proposition which would require a

defendant accused of fraud to make an investigation of the files of the companies involved and to tender voluntarily all relevant documents there discovered. Even then such a defendant would be in peril of having the settlement vacated if in the future other letters or documents were discovered. No support for this legal theory comes from Alleghany's citation of cases establishing the duty of self-dealing directors to make full and frank disclosure. For this failure the *Zenn* and *Breswick* suits were brought. On the merits Kirby and Young may well have obtained substantial financial benefits for themselves by wrongful self-dealing. But the *bona fides* of the 1950 stock exchange were not the issue for determination by the district court here; the issue was whether there was a sufficient basis for a [fol. 3146] federal court to nullify a settlement in a case involving fraud which had been judicially approved in the state court.

Appellant cites *Masterson* v. *Pergament,* 203 F. 2d 315 (6th Cir.), *cert. denied,* 346 U. S. 832 (1953); *Cohen* v. *Young,* 127 F. 2d 721 (6th Cir. 1942), *cert. denied,* 321 U. S. 778 (1943); and *Heddendorf* v. *Goldfine,* 167 F. Supp. 915 (D. Mass. 1958) as supporting the principle that settlements in derivative actions should be set aside if accomplished through concealment by wrong-doing directors. In *Masterson, supra,* the appeal was from an order of the district court approving a compromise in a derivative suit. The order was affirmed although the dissenting judge would have vacated the settlement and directed the trial to proceed on the merits. The majority noted the difference between a trial on the merits and a review of a settlement, saying, 203 F. 2d at 330:

> We must not forget that what was submitted to the District Court was a proposed settlement. A settlement is the result of a compromise and in effecting a compromise each of the parties expects to make some surrender, in order to prevent unprofitable litigation, effect upon its credit, the wasting of time on the part

of its officers that should be devoted to the success of its enterprise and, so, compromises are generally approved by the courts.

In *Cohen, supra,* the same dissenting judge wrote for the rejection of a settlement but on the ground that the district court was in error in not considering the available evidence and in relying merely upon the recommendation of a majority of the attorneys. The case was remanded so that further testimony could be taken.

In *Heddendorf, supra,* the issue before the district court was whether the settlement of a stockholders' derivative [fol. 3147] action should receive court approval. The court initially disapproved the settlement because of its failure to safeguard the stockholders against further wrong but left the door open for a settlement plan which contained protective provisions (167 F. Supp. at 923). In a supplemental opinion, approval was withheld until certain information was supplied under oath (*id.* at 926). Finally, the second compromise was approved (*id.* at 929). These steps were not unlike the proceedings in *Zenn* and *Breswick* whereby ultimately a settlement satisfactory to court and counsel in these cases was reached.

More analogous is the case of *Feldman* v. *Pennroad Corp.,* 155 F. 2d 773 (3d Cir.), *cert. denied,* 329 U. S. 808 (1946). There a settlement of a stockholders' suit in the Delaware state court was approved by the Court of Chancery after a hearing upon which many parties appeared in opposition. The Supreme Court of Delaware affirmed the Chancery Court's decision. During this proceeding, the plaintiff Feldman brought an action in the federal court to enjoin the consummation of the proposed settlement. The district court dismissed the complaint. On appeal, the court of appeals affirmed, saying: "In the absence of bad faith, the Delaware law affords her no right to judicial interference with the settlement merely because the amount agreed upon in settlement is deemed by her to be inadequate." (155 F. 2d at 776.) The court referred to the state court's finding

"after a full hearing that the Pennroad directors acted in good faith in agreeing to the settlement," and held that the "determination of these basic facts by the Court of Chancery is, therefore, now conclusive between the plaintiff and Pennroad and she is estopped from further disputing them in the present case."

Tempting though it be to retry the settlement proceeding in the New York Supreme Court and, possibly with the [fol. 3148] subconscious advantages of hindsight, to reach different conclusions and draw different inferences from those of the Referee and court therein, this is not our appellate function. The district court had to resolve the issue before it, namely, whether to vacate the State court judgment approving the settlement because of Kirby's alleged failure to produce certain documents. Essential to such resolution were such fact findings as Kirby's possession and control of the documents, his knowledge of their contents and his suppression thereof. Upon the trial, the counsel representing Alleghany had full opportunity to examine and cross-examine the principal alleged culprit, Kirby, Pomerantz (counsel for the stockholders in the *Zenn* suits), Graubard (counsel who so vigorously opposed the settlement), Purcell, Shipman, the various attorneys who were instrumental in bringing it to a conclusion in December, 1959, and other witnesses. After hearing these witnesses, the court found "that plaintiff has failed to establish that defendant Kirby committed a fraud upon the State Court or its Referee in failing to produce documents at the hearings before the Referee which were not called for at the hearings and most of which were not in his possession but were in the possession of IDS." 218 F. Supp. at 186. In the light of the concession by plaintiff's counsel that he could not tie the financial projections sought to be introduced to Kirby's personal knowledge, the district court's refusal to speculate or infer that Kirby must have seen them cannot be characterized as "clearly erroneous." In view of this factual finding, it is unnecessary to consider the district court's alternative

conclusion that plaintiff cannot collaterally attack the settlement in the State Court because "The conduct of Kirby, if fraudulent, was not extrinsic fraud as defined by New York law."

Affirmed.

[fol. 3149] KAUFMAN, *Circuit Judge* (concurring):

As my brother MOORE has amply demonstrated in his able opinion, the New York State judgment which we are here asked to overturn was rendered only after extensive hearings, exhaustive arguments of counsel, and protracted negotiations. Unlike the situation which prevailed at the time of the exchange transaction itself, moreover, the *Zenn* settlement proceedings did not involve a body of silent and quiescent shareholders, meekly trusting their directors to act in the best interests of the company. Rather, it is reasonable to infer from the nature of the controversy that at the time of the *Zenn* hearings the shareholder-plaintiffs and their experienced and zealous attorneys recognized Kirby and his co-defendants as bitter antagonists, whose interests in the settlement negotiations were diametrically opposed to those of Alleghany. Under these circumstances, therefore, while I find it unnecessary to determine whether the director-defendants were under any greater obligations than those customarily borne by an adverse party in a lawsuit, I agree with Judge MOORE that Alleghany has failed to establish that we should take the extraordinary step of setting aside a final and binding state judgment in a wholly collateral action.

In light of my brother FRIENDLY's considered dissenting opinion, however, a few additional remarks would seem to be in order. Thus, although the case was argued—both in the District Court and on appeal—primarily if not exclusively on the theory that *Kirby's* failure to produce certain documents constituted fraud sufficient to vitiate the state judgment, the dissenting opinion appears to see the case in a somewhat different light. Conceding that personal

dereliction on Kirby's part was not established, it appears to suggest that this is irrelevant, and that the withholding of material documents from the eyes of the referee in [fol. 3150] *Zenn* justify setting aside the judgment, even if this non-disclosure was the work of Young and Purcell, and not that of Kirby. The underlying premise of this line of reasoning seems to be that Kirby ought not be permitted to claim the benefit of a favorable settlement if that settlement was procured by fraudulent means—even if he was not a party to the fraud.

This approach to the case—which focuses on the activities of Young and Purcell, rather than that of Kirby—has much to commend it at first blush. In terms of its reliability as a fair and genuine adjudication of the adequacy of the settlement, the referee's approval would seem to stand on no firmer grounds merely because the fraud which kept material documents from the attention of the *Zenn* plaintiffs may not be directly imputed to Kirby. But if I am thus willing to concede the validity of this sort of analysis as a general proposition, I am unable to agree that the conduct of Purcell and Young was such as to warrant overturning the judgment as against Kirby.

As I understand it, the crucial document which Purcell and Young are alleged to have withheld is Exhibit 365 for identification, a comparison of actual 1949 earnings, with actual and projected figures for 1950.[1] Since the actual figures were before the *Zenn* referee, the key item here is, of course, the projected outlook for 1950. And it is the

[1] I do not take it as suggested that either Young or Purcell acted "fraudulently" in failing to produce the handwritten Purcell-Young note. Whatever the duty to be imposed on defendant-directors, I would hardly think that it encompasses production of this sort of informal memorandum, jotted by one defendant to another while settlement negotiations are in progress. Since the note is prominently mentioned in the dissenting opinion, however, I would add that Purcell seemed to consider "not too helpful" the spread between *actual* 1949 earnings of $1,515,401, and *actual* 1950 earnings of $8,600,444, figures which *were* before the *Zenn* referee, rather than projected 1950 earnings of $5,992,168.

[fol. 3151] failure of Purcell and Young to come forward with this projection which forms the basis of the claim of fraud.

But, the majority opinion has quite properly noted, that the particular pieces of paper which comprise Exhibit 365 could not have been seen by anyone at the time of the exchange transaction—let alone by Kirby. Since the document contains actual figures for 1950, it could not possibly have been compiled before May, 1950, when the exchange transaction was consummated. Further, as both majority and dissenting opinions observe, the essential information conveyed by Exhibit 365 *was* before the *Zenn* referee, and was spotlighted by the vigorous arguments of counsel. Thus, the spectacular improvement in the earnings of the IDS mortgage department, almost wholly responsible for the large increase in IDS total earnings, was predicted in Purcell's letter to Young and Kirby, which was, in turn, introduced in *Zenn*. Indeed, the primary difference between Exhibit 365, which was not introduced, and the Purcell letter, which was, turns on the fact that the former also indicated that the substantial gains in the mortgage operations would not be nullified by losses of other IDS divisions.

In short, the *Zenn* referee was informed of the projected vast increases in the earnings of the mortgage department; he was not told that the other IDS divisions were not expected to lose money. But even if his failure to learn of this last piece of information may be attributed to the nondisclosure of Purcell and Young, I cannot find this sufficient to warrant upsetting the New York judgment as against Kirby.

In so deciding, I agree wih Judge Moore that the relevant standard cannot be that provided by our decision in *United States* v. *Consolidated Laundries Corp.*, 291 F. 2d 563 (2d Cir. 1961), or whether there is any fair basis for thinking that the undisclosed documents "might have" [fol. 3152] changed the result. *Consolidated Laundries*, a criminal prosecution, involved the negligent failure of the

government to produce information relevant to the defense; our result was derived from our continuing duty to supervise the administration of criminal justice in the federal courts. Here, on the other hand, we are asked to set aside a state judgment in a civil action because of fraud which was allegedly committed by parties other than the present defendant. In such a situation, considerations of *res judicata* and comity must be taken into account; institutional imperatives and the necessity of finality in litigation are of far greater significance. In short, even if the obligations of a court passing on the settlement of a derivative suit may be analogized to those of a criminal court, my reply is that we are neither in the position of passing on the settlement or reviewing a criminal conviction. By its action in *Zenn,* the Supreme Court of New York passed on the settlement of this derivative suit; in the present proceeding, we are asked to set that judgment aside. Since we are hardly entrusted with the obligation of ensuring that the states do perfect justice in the civil litigation properly before them, we have absolutely no warrant in considering this settlement as if it were now being presented for our approval as an original matter.

I agree with my brother MOORE that Alleghany has failed to establish that the New York judgment should be set aside.

FRIENDLY, *Circuit Judge* (dissenting):

I can perceive no principle that would eliminate or even lessen the fiduciary obligations of directors who wish to settle a derivative action wherein they are charged with self-dealing. At least I cannot when, as here, they remain in control of the corporation, its officers, and its [fol. 3153] files relevant to the merits of the claim and consequently to the providence of the settlement. When they seek to extinguish the corporation's claim, they are dealing with the entity whose interests have been entrusted to them just as much as in the earlier transaction; I see no reason

why their obligation of fair dealing and full disclosure to a court passing on the settlement should be a whit less than their previous duty to disinterested co-directors and to stockholders.

I agree nevertheless that a director thus sued is not bound actively to ferret out information that will promote the case against him or show the improvidence of a settlement to which he has persuaded a stockholder's lawyer to agree; and that insofar as the plaintiff's case here hinged upon establishing personal dereliction by Kirby with respect to the settlement hearings, this was not made out. But although the trial was largely conducted on one or the other of these theories, the complaint did not so limit the plaintiff, and on at least one occasion its counsel articulated another course which, in my view, it was entitled to pursue and which might well lead it to victory.

In examining Purcell and seeking to obtain admission of the evidence discussed below, counsel argued that "if Mr. Kirby entrusts the responsibility to some extent of his being a director of Alleghany, if he entrusts some of that responsibility to Mr. Young, then Mr. Kirby cannot avoid accepting the consequences of whatever Mr. Young may have done . . . " When one of a group of fiduciaries accused of illegal self-dealing conceals from a court facts which pertain to the liability of his associates as well as himself, a settlement so procured is voidable as to all. A partner for whose benefit the facts were concealed can no more preserve a settlement thus obtained than the one who was on the front line. If, as the evidence shows, Young, [fol. 3154] Kirby and Purcell conspired to make an unlawful appropriation of Alleghany's investment in IDS Class A stock, which was then challenged by suit, they remained bound to the end. Kirby recognized this rather pointedly when, late in 1959, he sent Young's widow a copy of counsel's letter advising him of his enormous potential individual and even more enormous potential joint liability, which Young shared, and implored that she "fully rea-

lize how important it is to you and me that there should not be the slightest indication of disharmony in our ranks and that absolutely nothing should be done at this time to indicate anything like that." Kirby had hardly heard of Mr. Justice Brandeis' opinion in *Jackson* v. *Smith*, 254 U. S. 586 (1921), but his instinct was sound.

That the diversion of the IDS Class A shares from Alleghany's treasury was a joint enterprise of Young and Kirby, in which Purcell, like them a director of Alleghany, joined before its consummation—if indeed he had not been a party to it from its inception—will appear from what is said below. All three were named as defendants in the state court action, *Zenn* v. *Anzalone*, wherein stockholders sought damages or rescission; although Kirby had not been served in that action, he had been in a similar action by Zenn in the federal court. All three had an interest in promoting the settlement here attacked. Young and Purcell, but not Kirby, testified at the hearings before the Referee. There was evidence, here excluded, which showed, at minimum, that Young and Purcell permitted the Referee to pass upon the settlement when they should have been aware that crucial and damaging evidence, eagerly sought by an objector and well known to them, was not before him. If the settlement was voidable on that account against these members of the conspiracy, it is no less so against one who chose to remain secluded in [fol. 3155] Morristown, New Jersey, while his partners carried the heat of the battle in New York.

Plaintiff's discovery in this action found in Alleghany's files a handwritten letter by Purcell to Young on July 27, 1954, at a time when, as the letter shows, Young was engaged in settlement discussions with Pomerantz, general counsel for the plaintiff stockholders in *Zenn*. Purcell, one of Alleghany's nominees on the board of IDS, had resigned as a director of Alleghany in March 1953, to become president and later chairman of IDS, a post which he retained until the summer of 1955. With this Purcell sent

a letter dated July 26, 1954, from Waag, Vice President and Controller of IDS, to him; Waag's letter enclosed three schedules. Purcell suggested that Young "note among other things on page 2 of the income account attached to the 'Comments on Operations' for December 1950 that Income from Operations, i.e., before taxes or capital transactions, *had been projected at $5,992,168,* but turned out to be $8,600,444. *This may not be too helpful* as Income from Operations in 1949 was only $1,515,401." (Emphasis supplied.) One of the schedules reproduced this forecast.

Indeed it would not have been "too helpful." The projected 1950 income before taxes or capital transactions amounted to $20 for each IDS share Young and Kirby acquired for $8.15 from Alleghany in the exchange transaction.[1] Yet their defense to the stockholders' claim hinged largely on a contention that the jump in IDS' earnings was not foreseeable when they acquired the shares in mid-May, 1950. Waag's letter stated the 1950 projection "was most likely completed in January of 1950 which would indicate that we anticipated a considerable improvement in [fol. 3156] our mortgage operations."[2] In his testimony in this case Purcell admitted having seen the full 1950 projections "early in the year" although not before his return from Europe around April 12. In any event, Purcell's request to Crabb, President of IDS, on May 10, five days be-

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[1] Apparently because of the nature of IDS' business, taxes took a much smaller bite than in the case of the usual corporation. Thus, in 1950, when pre-tax income amounted to $8,628,745, income taxes were only $2,592,000, leaving net income of $6,036,745—slightly over $20 per share.

[2] Appellee argues that Waag erred as to the date, since the projection found in the IDS files was dated April 14, 1950. The latter seems to be a somewhat differently organized projection in which the corresponding item for earnings before taxes and non-recurring transactions was $5,641,150, but the addition of earnings of subsidiaries produced a total of $7,140,850. In any event the Alleghany's stockholders' meeting was not held until May 3 and the exchange was not consummated until May 15, 1950.

fore the exchange took place, for additional copies of the IDS projections showed that at least by this date, copies were in his possession. Since during April Purcell was endeavoring to acquire for himself $125,000 worth of IDS Class A stock in connection with the simultaneous acquisition by Young and Kirby, the likelihood that he paid close attention to the projections as soon as they became available is overwhelming. Purcell's letter of February 11 to Young and Kirby informing them of the improved earnings projected for the mortgage department showed that Purcell was attentive to whatever predictions were available. Projections were of unusual importance at IDS during this period because of the company's heavy cash commitments to redeem maturing investment certificates in the next two or three years. As Kirby testified in this case, had the earnings been insufficient to finance their redemption, IDS could have encountered serious financial difficulty. On the other hand, as is invariably true of highly "leveraged" debt-heavy structures, once a sufficient flow of cash was assured to cover these commitments, any further increases in operating profits, such as this projection foretold, would predictably cause a dramatic increase in net earnings. The IDS files also yielded a projection us- [fol. 3157] ing the same figure for 1950 (with a handwritten notation that the estimate of underwriting income was "very conservative") and showing that for the years 1951-54 consolidated income before capital transactions and income taxes would range from $3,860,300 to $5,265,750. Since Purcell must have been in communication with Young during April and early May, 1950, as to being cut in on the exchange, it would be hard for a trier of the facts to resist the inference that he told the good news to his associate; no one so brilliant and experienced as Young would fail to recognize five years later what advantage would accrue to astute counsel armed with Purcell's handwritten note and its enclosures.

What happened to Purcell's note and the enclosures cannot be precisely determined on this record. Two of the

schedules attached to Waag's letter, a restrospective quarterly analysis of income for 1949 and 1950, and a list of the larger items included in commissions and participation project fees for 1950 by quarters, were offered in the *Zenn* settlement hearings by Pomerantz's colleague, Haudek, who was advocating the settlement; apparently he had obtained them by inspection of Alleghany's files. These were in no way damaging to the defendants or the proponents of the settlement since by their very nature they could not have come into existence until after the end of 1950 and the information they divulged could not have been known before that time; indeed, by showing that the greatest jumps in income were in the last three quarters and the most spectacular one in the fourth, they lent some support to the argument that the huge 1950 earnings were manna of whose prospective descent Kirby, Young and Purcell could hardly have been aware. But the seriously damaging schedule, containing the projection of 1950 income, which Waag's letter said had been prepared in [fol. 3158] January and surely was available by mid-April, did not find its way into evidence in *Zenn*.

Responsive to Judge Dawson's rulings that he would not admit the handwritten note and that he would admit Waag's letter and the schedules only on proof that these were in the Alleghany files at the time of the settlement hearings, plaintiff's counsel argued (1) that the discovery of the projection in Alleghany's files, where Haudek had earlier found the two schedules which had accompanied it, warranted the inference that the entire group of papers had been in Alleghany's possession at the time of the *Zenn* hearings, and (2) that the non-production of Purcell's note, Waag's letter and the damaging schedule either by Haudek or by Graubard, counsel opposing the settlement, warranted an inference that Alleghany had not included them in the files made available for inspection. The argument seems sound enough. As to the first branch, we have called attention in recent opinions dealing with the tardy discov-

ery of documents to "the evidentiary principle that the subsequent existence of a fact supports the inference of its earlier existence, when the subsequent condition is one which ordinarily would not exist unless it had also existed at the earlier time," *United States* v. *Consolidated Laundries Corp.*, 291 F. 2d 563, 569 (1961); *Kyle* v. *United States*, 297 F. 2d 507, 511 (1961); this, particularly when reinforced by the earlier finding of two of the schedules in the Alleghany files, was at least enough to transfer the burden of showing how the missing documents had since come into Alleghany's possession if they were not there in 1955. The only other likely possibility would seem to be that they had remained with Young, but that would not have helped since Graubard had asked for and supposedly received all such papers in Young's possession. The second branch of the argument was supported by Pomerantz's [fol. 3159] testimony that he had reviewed the available files "very closely," and that his "best recollection is that we were shown no statements which contained estimates in futura," by Graubard's testimony that he could not recall ever having seen a projection for 1950 and that "The probabilities are that I did not see anything which would indicate that the earnings would be so many times the sale of the stock. If I had, I would have introduced it in evidence, had I known," and by the inherent improbability that a lawyer so able and diligent would have failed to appreciate the significance of the schedule, especially when this was flagged for him by Purcell's handwritten note and it would have filled the very gap in his proof of which he was acutely aware.

However, I find it unnecessary to decide whether we could properly upset Judge Dawson's ruling that plaintiff had not sufficiently discharged the burden of showing that at the time of the settlement hearings the portion of the Waag file not offered by Haudek was in the possession of Alleghany or Young and was withheld from the documents made available for inspection. For even that view leaves Young and Purcell knowing or chargeable with knowing

that the Referee was deciding without the benefit of evidence which they knew to exist—a full official projection showing the enormous 1950 earnings reliably expected for IDS, which had been known to Purcell and almost certainly to Young before the consummation of the exchange, the importance of which Purcell had sharply brought to Young's attention before the settlement negotiations, and which they and their counsel, who were also acting for Alleghany, knew to be precisely what the attorneys for the stockholders—Pomerantz before the settlement and Graubard thereafter—had been searching for without result.

[fol. 3160] Preparatory to the taking of the depositions of Young and of Wallace, Alleghany's secretary, in December, 1954, Pomerantz had made a demand for the production of documents from Alleghany, including "(35) All forecasts or budgets concerning IDS and its subsidiaries, prepared by or for the use of Alleghany or IDS and their officers and directors, during the year 1949, the first six months of 1950 and the last six months of 1953," and Haudek made this demand still more general when the depositions were taken. The quest for projections was continued by Graubard at the hearing before the Referee. He said he wanted "anything bearing upon the earnings of I. D. S. and, therefore, the value of its stock, at the end of 1949, during the Fall of 1949, and the Spring of 1950." In examining Wallace, he repeated the request, made during the depositions, for "any kind of forecast, both as to the nature of earnings from mortgage operations, as well as any other aspects of the business of I. D. S." and was told "There are no such documents in Alleghany Corporation's files, unless we find those various reports we are looking for." Complaining "that the poor Alleghany files are emaciated, they have been deprived of nourishment with regard to this 1949, 1950 transaction," Graubard asked for Young's personal records, which, as he later stated, counsel for Young made available. Apparently sensing that something was missing, Graubard noted in examining Young that he had "had

some difficulty in finding the files and reports of Alleghany Corporation in regard to I. D. S. affairs for the period in question, 1949-1950"; this led to a chorus of objections by Pomerantz and Young's counsel and a ruling by the Referee striking out the offending remark. Later Young assured Graubard that his policy was never to destroy or remove or countenance the destruction or removal of files because he "felt that the first consideration of management [fol. 3161] was to conduct itself so that it never had anything to destroy . . ." This lofty concept of an officer's responsibility scarcely comports with permitting the Referee to approve a settlement for a few hundred thousand dollars of a liability for self-dealing ranging into the many millions without the benefit of evidence, which Young knew to be not "too helpful," relating to a vital element in the case. Of course, Graubard knew IDS had made projections; the point is that he had been given reason to think the record before the Referee contained everything Young and Purcell knew in the spring of 1950, whereas they knew it did not. As proponents of a transaction whereby they would purchase from Alleghany its cause of action against them, Young and Purcell had a duty to see that the Referee had that evidence; court approval of an advantageous bargain granted in ignorance of documents, known to Young and Purcell, showing that they had this optimistic projection in early 1950, no more finally settles the liability of themselves and Kirby than did the stockholders' approval of the underlying bargain in 1950, similarly procured without disclosure of the projection. *Cf.* ALI, Restatement of Torts 2d (Tent. Draft No. 10), §551(2)(a).

Since in such complicated litgation some relevant documents will inevitably be overlooked, the undesirability of reopening judgments demands that judicial approval be final unless the undisclosed evidence is of real importance and not merely cumulative of other evidence that was received. Kirby argues, and my brothers seem to agree, that the whole matter of the complete IDS projection of 1950 earnings is a tempest in a teapot because the record before

the Referee did contain a partial projection of which Young and Kirby admitted knowledge. This was in a letter to them dated February 11, 1950, in which Purcell, before leaving for a vacation in Europe, gave "a brief report [fol. 3162] on the present situation in Investors Diversified Services, Inc. and the accomplishments of the nine months since our acquisition." The letter included a statement that reported 1949 income would reflect a large accounting adjustment to cure a deficiency in the certificate reserve account accumulated in prior years—one of the serious problems confronting IDS so featured before the Referee—and that "During 1950 the Mortgage Department forecasts, conservatively, $8,315,000 gross income from mortgage operations (not including interest), with a net, before home office expenses, of $5,720,000." Kirby then points out that Graubard, in his memorandum opposing confirmation of the Referee's report by Mr. Justice McGivern, argued that Purcell's letter "completely explodes the tortured analysis by which the Referee convinced himself that, although defendants had reason for cautious optimism, they did not foresee the 'spectacular' IDS earnings for the year 1950."

Graubard surely did the best he could with what he had, and one may indeed wonder whether anything short of proof that Young and Kirby had received a gold plated guarantee of IDS' 1950 earnings would have swayed the Referee, who went out of his way to compliment them on their presentation to the Alleghany stockholders, as to which more below, and concluded that a trial court would give judgment in their favor.[3] But there was an enormous

[3] It should be remembered that the Referee approved a settlement under which the total cash payment to Alleghany was $1,000,000, $300,000 of which had been added to the proposal that Pomerantz had accepted as a result of the efforts of counsel for plaintiffs in the federal court action, *Breswick* v. *Briggs*. Although the state court accepted the Referee's report, Judge Dimock rejected it for failure by the Referee to hear the *Breswick* plaintiffs "on the question of the settlement value of the whole case and its relation to the value of the additional offers," and directed further hearings. Kirby, who had not previously testified in any of the proceedings,

[fol. 3163] difference between a paragraph in a general letter, commenting on the prospects of one department of IDS, a paragraph not even noted in the Referee's report, and proof that shortly before making the settlement, Young and Purcell had been reminded of the existence of an official company forecast in early 1950, covering all departments, which negated any fear that the anticipated quadrupling of income from mortgage operations would be cancelled out and showed instead that this would be enhanced by other divisions.[4] There was at least a much greater chance that such evidence, developed as Graubard would have developed it, might have made some impression upon the Referee (who, because of the federal court litigations, did not file his report, dealing with a variety of claims of malfeasance, for three years after the hearings), or, if it did not, upon the Supreme Court justice who had appointed him, or, if it did not, that such evidence might have encouraged the objectors to go on to the Appellate Division, or that it might have led Judge Dimock to refuse to lift the federal court injunction that had blocked the settlement.

I cannot agree that when judicial approval of a settlement by a fiduciary has been procured by culpable non-

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was scheduled to be the first witness at the reopened hearings; an associate testified that Kirby "looked upon his appearance as a witness with somewhat—with more or less horror, because he had been told by Ireland that Mr. Young had perjured himself in his testimony . . ." After receiving an opinion from counsel that his potential personal liability on the IDS exchange transaction approximated $22,800,000 and his potential joint liability an additional $39,350,000, computed on a price of $1,600 per share for the stock acquired for $8.15, plus over $70,000,000 for other items, he added to the settlement another $1,100,000, which he estimated would cost him only $99,000 after taxes; Young's estate contributed another $900,000. One of the objectors having died and the others being tired out, this was accepted without the further hearing ever being held.

[4] The directors' answering memorandum before Mr. Justice McGivern minimized the Purcell letter of February 11 as merely reporting "favorable trends in certain aspects of IDS activity" and touching "only a few of the multitude of problems and activities of the Company."

disclosure of evidence by a confederate fiduciaries, the test of materiality applicable on motions for a new trial on [fol. 3164] the ground of newly discovered evidence has any relevance; indeed, in the very decision cited by the majority, Judge Kaufman carefully distinguished between newly discovered evidence *simpliciter* and the recantation of a witness, 131 F. Supp. at 120. The test should be more nearly that applied by us in *United States* v. *Consolidated Laundries, supra,* 291 F. 2d 563,[5] or by the New York courts in *Matter of Lautz,* 128 Misc. 710, 220 N. Y. S. 782 (Surr. Ct., Erie Co. 1927); and *Boston & Maine R.R.* v. *Delaware & Hudson Co.,* 238 App. Div. 191, 196, 264 N. Y. S. 470, 477 (3d Dept. 1933)—whether there is any fair basis for thinking the undisclosed evidence *might have changed* the result. Here the evidence could well have done that.

I say this because, with full appreciation of the dangers of reliance on hindsight, Graubard's objections were so strong that almost anything more might have sufficed to tip the scales. Although my brothers seem to concede the inequity of the exchange transaction, this scarcely conveys the picture. Alleghany had decided to go into IDS in the spring of 1949, after a most thorough investigation. It picked up 48,225.61 shares of the non-voting Class A stock on the market for $8.15 per share; at the same time it

[5] Although the decision in *Consolidated Laundries* was based upon our duty to insure the fair administration of criminal justice in the federal courts, there are enough similarities between a prosecution and a derivative suit against self-dealing fiduciaries to make the test of materiality in that decision highly pertinent. Both the prosecutor and the director-defendant are charged with the duty of assuring that their adversaries are honestly and fairly treated. Just as a criminal court is entrusted with the protection of defendants from overzealous prosecution, a court passing on the settlement of a derivative action is charged with the protection of the absent shareholders, whose interests may be represented inadequately or not at all by the time a settlement has been negotiated. Where deliberate dereliction on a director's part has prevented the court from safeguarding the interests entrusted to it, a reasonable possibility that the undisclosed evidence might have led to disapproval or to a substantial increase in a settlement should suffice for reopening.

[fol. 3165] bought some 17,745 shares of the voting stock for around $11. The control block of 85,660 shares of voting common was bought for $20. These prices were paid after a year, 1948, in which IDS had earned $374,355 or little over $1.25 per share. As 1949 wore on, Young and Kirby could not help but realize that Alleghany had made a fine investment, even though they could hardly have foreseen just how fine. By mid-August one of the consultants who had initially surveyed IDS for Alleghany accurately predicted IDS' 1949 income would amount to some $1,200,000 to $1,500,000, or more than $5 per share.

This was the background when seven of Alleghany's ten directors—including four officers, Kirby, Young, Purcell and Anzalone—assembled for a scheduled meeting on December 6, 1949. The agenda had not mentioned that any action with respect to the IDS stock in Alleghany's portfolio was contemplated.[6] The minutes recited that the Chairman, Young, "stated that among the securites which had been considered as available to be offered to stockholders in exchange for the Corporation's outstanding preferred stocks was the company's holding of 48,225.61 shares of Investors Diversified Services, Inc. Class A Common Stock" but that counsel had advised that no offer of these shares to all stockholders "could be made without registration with the Securities & Exchange Commission which, in view of the size of the holding and the costs and delays incident to registration, would not be worthwhile." He therefore recommended, in addition to an exchange offer not involving the IDS shares which was being made to all preferred stockholders, a further offer which would give "the officers" of Alleghany the right to exchange holdings of Alleghany preferred stock for the holdings of IDS Class A. His recommendation was that the exchange ratio should "be not [fol. 3166] less favorable to the Corporation in relation to the respective market prices of the Alleghany Preferred stocks received and the Investors Diversified Services, Inc.,

[6] The absentees included two lawyers and an investment banker.

stock delivered than the exchange ratios which are accepted by the company pursuant to the public offer." Discussion developed some concern over the fact that the current "market" price of the IDS Class A shares had dropped to $5.50 per share—in fact there was no market, as the Referee found; the directors, watchful for Alleghany's interests to the extent of thinking it might indeed seem peculiar to allow officers to acquire the IDS shares for an amount approximating current earnings, thought Alleghany should at least recover its cost. The resolution accepted Young's recommendation with the sole change that Alleghany was to get the higher of its cost or the market price of the IDS shares at the time of exchange.

Although it is understandable why registration problems made it impracticable to offer the IDS Class A shares, representing a relatively small investment, to all stockholders of Alleghany, that in no way explains why they had to be offered to anyone. Alleghany had scarcely acquired them after prolonged study, that very year, just in order to have something "available" to exchange for its own preferred stock at the better of cost or the price on a market that was so thin as to be meaningless; its portfolio contained many securities, having a readily ascertainable market value, which could be and were used to that end. The company's program of reacquisition of preferred stock had indeed been advantageous to the common stockholders and to preferred stockholders who did not exchange, but there was no crisis demanding that it immediately reacquire 2420 shares of Preferred Series A from Kirby, the same amount from Young, and 10 shares from Anzalone. The non-voting character of these IDS shares was no obstacle to their retention when Alleghany held 90% voting control. It must have been [fol. 3167] apparent that these shares were peculiarly unsuitable for an exchange offer to preferred stockholders, particularly to insiders. If IDS had the bright prospects that had led Alleghany to make its investment, all the stockholders should benefit; on the other hand, if the problems confronting IDS were as serious as Young and Purcell were

later to testify, it was scarcely right that the officers of Alleghany, including such an inconspicuous one as Anzalone, should bear a disproportionate share of the burden. Evidently some such considerations occurred to the draftsman of the resolution, who inserted another reason for the offer, namely, that "it would give the officers who accept the Class A stock of Investors a further incentive to make successful the operations of that company in which Alleghany will continue to hold its large controlling interest." One might suppose that Young's holdings of 10,083 shares of Alleghany Preferred Series A and Kirby's of 27,858 such shares plus 516,500 common shares would have given a fair degree of incentive, and if Kirby or Anzalone made any contribution to the success of IDS in the years after the exchange, this does not seem to have been called to the attention of the many tribunals that have been concerned. The Alleghany officer who was truly active in IDS was Purcell, who had brought it to Alleghany's attention, kept a careful watch over it from the outset, and later became its president and moved his office to its headquarters in Minneapolis. Since Purcell owned no Alleghany preferred, his reward was to come in a different manner. On January 30, 1950, Alleghany authorized him to buy $125,000 worth of IDS common stock for his own account at not to exceed $10 per share, and guaranteed him against loss on such purchases. By the date of the Alleghany proxy statement, April 6, 1950, he had picked up 3,828 Class A shares at an average cost of $5.562. Since these purchases had driven the price of IDS Class A from 5 nearly to 10, Alleghany, [fol. 3168] on April 26, 1950, a week before the stockholders' meeting, sent out additional proxy material announcing that if Purcell was unable to complete this program for personal participation in Alleghany's corporate opportunity, Kirby and Young would supply him with the necessary IDS shares, at cost, out of those coming to them under the exchange offer. On May 9, Purcell wrote Young and Kirby, noting that if he "were now to enter the market the price of the stock would probably be driven very high,"

a result which "I believe we all agree . . . is undesirable"; he wished to purchase 6,366 shares from each of them at $8.1453 per share, as he subsequently did.

Although at the very least the situation demanded maximum endeavor to insure that Alleghany's stockholders understood exactly what was afoot,[7] the effort was unsuccessful. The Alleghany proxy statement, which sought approval of the exchange, gave no financial information about IDS as a company. With respect to the IDS stock it told that the shares to be offered the officers had cost $8.1453 per share, had a market price of $5.50 at the time of the resolution of December 6, 1949, and had a current market price of $9 bid, $9.75 asked, whereas the voting common had been acquired at an average cost of $18.25 per share. Another portion of the proxy statement revealed the arrangement with Purcell and what he had done under it. On this basis, to the uninformed and unalerted stockholders, an exchange of IDS Class A shares that would give Alleghany the higher of cost or market would seem not unattractive, and the whole matter, in- [fol. 3169] volving an investment of $400,000, could hardly have appeared momentous. Only the stockholder who might wonder about the unusual disparity in cost between the voting and the non-voting stock would see cause for inquiry. For further information about IDS he would have to turn to Alleghany's Annual Report, mailed to him a fortnight before. If this had escaped the treatment usually given such reports, he would not have learned much. Although he was told that IDS' 1949 net income was "approximately $1,631,000, compared with $374,335 for 1948," no attempt was made to translate these totals into per share figures. A stockholder wishing to determine that would either have

[7] In addition to the fact that the exchange was extremely advantageous to the officers on facts admittedly known, it is exceedingly doubtful whether the resolution passed by the directors had any legal status under the quorum requirements in Alleghany's certificate of incorporation; hence only action by the stockholders could give the exchange even formal validity.

had to go to a financial manual to learn IDS' capital structure, or, if he returned to the Alleghany proxy statement, arrive at this figure by converting Alleghany's holdings into the total by first dividing the shares of each class which Alleghany owned by the percentage of its ownership and then adding the quotients—this to be followed by dividing the earnings by the sum so obtained. Granted that this computation is well within the power of the ordinary human mind, one may wonder how many Alleghany stockholders bothered to perform it. How simple it would have been for Alleghany's management to relieve the stockholders of this necessity by saying that IDS' 1949 earnings of $1,631,000 were more than $5 per share! And what illumination this would have shed on the succeeding comment that Alleghany regarded its interest in IDS "as a long-term investment," as to which, because of IDS' cash requirements, it did not "expect any return on our investment in IDS for a number of years" but considered the "outlook for eventual profits . . . to be unusually promising." The eventual might have seemed to Alleghany stockholders to be now, at least with respect to the stock acquired at $8.15 per share which the proxy statement, but not the annual report, told them would be exchanged with [fol. 3170] insiders. And that impression would have been considerably accentuated if Alleghany's management had vouchsafed the information, available when the additional proxy material was sent out on April 26, that although IDS had lost $223,000 in the first quarter of 1949, its pretax income from recurring operations in the first quarter of 1950 exceeded $1,000,000 and that continuation of that trend would produce 1950 earnings exceeding $15 per share! If all this had been supplemented by proof to the Referee that at the time of the exchange Purcell and Young knew IDS was forecasting even higher earnings, could any rational mind have predicted that a court would decide for the defendants?

My brothers rightly shrink from a precedent that would make every settlement of a stockholder's suit the prelude

to another in which the proceedings for approval of the settlement would be reexamined at great expense and effort. I too would regret that although, for reasons sketched below, it might be better if more such suits were tried and fewer settled so long as the procedures with respect to the approval of settlements remain as unsatisfactory as they are. But we would make no such precedent by a reversal in this case. Here we have an unusual situation. After litigation had begun, two of the principal architects and beneficiaries of the self-dealing and the subsequent settlement had their attention dramatically called to the existence of a report, clearly known to one of them and arguably to the other before the exchange, and nevertheless allowed the Referee to proceed to approval, knowing, on the most innocent construction, that this report, although eagerly sought by the objector's counsel, had not been found by him. Such cases will hopefully be rare; the instances in which the corporation or a large stockholder will seek to prosecute them will be rarer still; and the chances of success and [fol. 3171] consequent reward will not be such as to tempt the typical stockholder plaintiff save in occasional cases where it is as well to have him tempted.

I cannot at all agree with the implication in my brother MOORE's opinion that standard procedures for the approval of settlements afford sufficient safeguards in the "big" case, or that they did in this one. The plaintiff stockholders or, more realistically, their attorneys have every incentive to accept a settlement that runs into high six figures or more, regardless of how strong the claims for much larger amounts may be. The percentage allowance in stockholders' actions is "reduced as the amount of recovery passes the million dollar mark," 2 Hornstein, Corporation Law and Practice 253 (1959), see also Hornstein, Legal Therapeutics: The "Salvage" Factor in Counsel Fee Awards, 69 Harv. L. Rev. 658, 667-68 (1956); the income tax also plays a role; and a juicy bird in the hand is worth more than the vision of a much larger one in the bush, attainable only after years of effort not currently compensated and pos-

sibly a mirage. Once a settlement is agreed, the attorneys for the plaintiff stockholders link arms with their former adversaries to defend the joint handiwork—as is vividly shown here where the stockholders' general counsel sometimes opposed Graubard's efforts to gain information, although the settlement so vigorously defended before the Referee would have produced less than a quarter as much cash for Alleghany, $700,000, as the $3,000,000 ultimately secured through the efforts of the attorneys for the plaintiffs in the federal court litigation, unrelated to the claim here at issue, and Judge Dimock's initial refusal to lift the federal injunction. To say that "Through its representatives, it [Alleghany] elected to settle" is sheer fiction. Most of the independent Alleghany stockholders had no voice in the selection of their "representatives" or ability [fol. 3172] to evaluate the settlement these "representatives" had accepted for them. I cannot see how the attorneys proposing the settlement were any more "representative" than the attorney opposing it; the stockholders' true representative was the court, which was allowed to proceed in ignorance of vital information. Alleghany as a corporation never elected to do anything until the very end of 1959, when a directors' meeting presided over by Kirby approved the settlement. Indeed, the directors did not even provide Alleghany with independent counsel, whose supervision of the file search might have avoided the problem here presented.

This very fact, that directors accused of malfeasance have so much control over the evidence, both documentary and non-documentary, relating to their misdeed, makes it vital for a court of equity to insist upon a high standard with respect to disclosure at settlement hearings and to subject arguments that a breach was not consequential to a most icy scrutiny. All the dynamics conduce to judicial approval of such settlements. Even when there is objection, the changes are rung on the small proportion of the stock owned by the objector whereas a curtain falls on the equally small percentage owned by the plaintiffs, who quietly annex

the stock controlled by the directors and that of the inert mass. Perhaps the ultimate solution may be the appointment of government inspectors to investigate and prosecute, as is authorized in England under the Companies Act, 1948, 11 & 12 George 6, c. 38, §§164, 165(b)(ii), 168, 169(4), see Gower, Some Contrasts between British and American Corporation Law, 69 Harv. L. Rev. 1369, 1387-88 (1956), or, in the case of corporations trading in whose securities is subject to the Securities and Exchange Act, assignment to the SEC of an advisory role similar to that conferred by Chapter X of the Bankruptcy Act, §§172, 173, 222, 247. In the meanwhile, courts should enforce the most exacting [fol. 3173] standards of good faith on fiduciaries desiring to settle such serious claims of self-dealing as were here alleged. Appellant is right in reminding us of Judge Cardozo's great words, "Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions." *Meinhard* v. *Salmon*, 249 N. Y. 458, 464 (1928). I do not believe this teaching is dead in the New York courts; and we have not hitherto demanded a state decision directly in point before enforcing that salutary principle. See *Perlman* v. *Feldmann*, 219 F. 2d 173 (2 Cir.), cert. denied, 349 U. S. 952 (1955).

I would therefore reverse the judgment dismissing the complaint and, as defendants should have an opportunity to meet the evidence that was erroneously excluded, remand for further hearing. Since Kirby has regained control of Alleghany, I would instruct the judge to make provision for the continued prosecution of the action free from any control by the present directors.

[fol. 3174]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present:

Hon. Leonard P. Moore,
Hon. Henry J. Friendly,
Hon. Irving R. Kaufman,

Circuit Judges.

ALLEGHANY CORPORATION, Plaintiff-Appellant,

v.

ALLAN P. KIRBY, RANDOLPH PHILLIPS, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees.

JUDGMENT—May 19, 1964

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed; with costs to the appellees.

A. Daniel Fusaro, Clerk.

[fol. 3174a] [File endorsement omitted]

[fol. 3175]

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 173—September Term, 1963

Argued December 2, 1963

Decided May 19, 1964

Docket No. 28,397

ALLEGHANY CORPORATION, Plaintiff-Appellant,

—against—

ALLAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant.

On appeal from the United States District Court for the Southern District of New York.

PETITION FOR REHEARING—Filed June 23, 1964
(omitted in printing)

[File endorsement omitted]

[fol. 3204]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ALLEGHANY CORPORATION, Plaintiff-Appellant,

v.

ALLAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant.

ORDER GRANTING PETITION FOR REHEARING IN BANC

Townley, Updike, Carter & Rodgers, New York, N. Y., for plaintiff-appellant.

The petition for rehearing in banc is granted, with Judges Moore, Kaufman and Marshall dissenting, and Chief Judge Lumbard not participating. Further briefs may be filed not later than September 10, 1964, and reply briefs, if any, not later than September 30, 1964. Argument will be heard during October 1964 at a time to be fixed hereafter.

J. Edward Lumbard, Chief Judge.

22 July 1964

[fol. 3204a] [File endorsement omitted]

[fol. 3205]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present:

Hon. Sterry R. Waterman,
Hon. Leonard P. Moore,
Hon. Henry J. Friendly,
Hon. J. Joseph Smith,
Hon. Irving R. Kaufman,
Hon. Paul R. Hays,
Hon. Thurgood Marshall,

Circuit Judges.

ALLEGHANY CORPORATION, Plaintiff-Appellant,

v.

ALLAN P. KIRBY, RANDOLPH PHILLIPS, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees.

ORDER GRANTING PETITION FOR REHEARING IN BANC —July 22, 1964

A petition for a rehearing in banc having been filed herein by counsel for the appellant,

Upon consideration thereof, it is

Ordered that said petition be and hereby is granted.

Further ordered that further briefs shall be filed on or before September 10, 1964, and reply briefs, if any, shall be filed on or before September 30, 1964.

Further ordered that argument shall be heard during October 1964, at a time to be fixed hereafter.

A. Daniel Fusaro, Clerk, By Vincent A. Carlin, Chief Deputy Clerk.

[fol. 3205a] [File endorsement omitted]

[fol. 3206]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ALLEGHANY CORPORATION, Plaintiff-Appellant,

v.

ALLAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant.

ORDER MODIFYING ORDER DATED JULY 22, 1964 GRANTING PETITION FOR REHEARING IN BANC—October 27, 1964

Townley, Updike, Carter & Rodgers, New York, N. Y., for plaintiff-appellant.

The parties having filed further briefs and the court, Chief Judge Lumbard not participating, having given consideration thereto, the order of July 22, 1964 is modified and It Is Ordered that the case be submitted on briefs and without oral argument.

Sterry R. Waterman, For the Court.

October 27, 1964

[fol. 3206a] [File endorsement omitted]

[fol. 3207]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 154—September Term, 1964.

Submitted November 9, 1964

Docket No. 28397

ALLEGHANY CORPORATION, Plaintiff-Appellant,

v.

ALLAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant.

Before: Waterman, Moore, Friendly, Smith, Kaufman, Hays, Marshall, Anderson, Circuit Judges.

OPINION ON REHEARING—Decided January 12, 1965

Townley, Updike, Carter & Rodgers (Stuart N. Updike, J. Howard Carter, Lee W. Meyer, Ronald S. Daniels, Richard J. Barnes, Peter G. Kelley, of counsel), New York City, for Plaintiff-Appellant.

[fol. 3208]

Donovan, Leisure, Newton & Irvine (Granville Whittlesey, Jr., James V. Hayes, Robert M. Loeffler, Walter L. Stratton, John J. McCann, Ben Vinar, of counsel), New York City, for Defendants-Appellees.

PER CURIAM:

Subsequent to the filing of the three opinions in this case on May 19, 1964, reported at 333 F. 2d 327, plaintiff-appellant petitioned for a rehearing by the full court. This petition was granted on July 22, 1964, Chief Judge Lumbard

disqualifying himself and not participating. Later, the court having ordered that the rehearing be without oral argument, briefs were submitted by the parties, the last and final brief in rebuttal having been filed on November 9, 1964.

Upon consideration of the petition and subsequently filed memoranda, the court is evenly divided as to proper disposition of the case, for Judges Moore, Kaufman, Marshall and Anderson would affirm the decision below, reported at 218 F. Supp. 164 (S. D. N. Y. 1963; Dawson, J.) and Judges Waterman, Friendly, Smith and Hays would reverse that judgment and would remand the cause to the district court for further hearing there.[1]

Accordingly, the judgment below is affirmed.

[1] In its reply brief on rehearing *in banc* appellant points out for the first time that since the claim in the state court suit relating to the exchange of stock was grounded in part on an allegedly false and misleading proxy statement, see §14(a) of the Securities Exchange Act of 1934, 15 U. S. C. §78n(a) and SEC Rule X-14A-9, federal jurisdiction existed, see *J. I. Case Co. v. Borak*, 377 U. S. 426 (1964), and argues that §27 of the 1934 Act, 15 U. S. C. §78aa, made such jurisdiction exclusive and rendered the state judgment void. We find it unnecessary to rule on the argument. For, apart from any other factors, the issue of jurisdiction was raised in and decided by the New York courts, 1 App. Div. 2d 662, 146 N. Y. S. 2d 286 (1955), motions for reargument and for leave to appeal to the Court of Appeals denied, 1 App. Div. 2d 773, 149 N. Y. S. 2d 86 (1956); and no attempt to secure review by the Supreme Court of the United States was made. See *Treinies v. Sunshine Mining Co.*, 308 U. S. 66, 78 (1939). On this the court is unanimous.

[fol. 3209]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present: Hon. Sterry R. Waterman, Hon. Leonard P. Moore, Hon. Henry J. Friendly, Hon. J. Joseph Smith, Hon. Irving R. Kaufman, Hon. Paul R. Hays, Hon. Thurgood Marshall, Hon. Robert P. Anderson, Circuit Judges.

ALLEGHANY CORPORATION, Plaintiff-Appellant,

v.

ALLAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant.

JUDGMENT—January 12, 1965

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to the appellees.

A. Daniel Fusaro, Clerk.

[fol. 3209a] [File endorsement omitted]

[fol. 3340]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ALLEGHANY CORPORATION, Plaintiff-Appellant,

v.

ALAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant.

ORDER ON MOTION IN BANC TO RECALL MANDATE AND GRANT LEAVE TO INTERVENE TO CERTAIN SHAREHOLDERS OF ALLEGHANY CORPORATION, ETC. April 12, 1965

Application to recall the mandate of this court is denied. The appeal from the order of Judge Ryan is set for argument April 19th, in the event the applicants are still desirous of proceeding with that appeal; all papers to be considered in connection therewith are to be filed on or before April 15, 1965. Judges Waterman, Friendly and Smith have agreed to this disposition. Chief Judge Lumbard is disqualified and Judges Moore and Anderson were not available.

I. R. K.
P. R. H.
T. M.

April 12, 1965

[fol. 3340a] [File endorsement omitted]

[fol. 3341]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present:

Hon. Irving R. Kaufman,
Hon. Paul R. Hays,
Hon. Thurgood Marshall,

Circuit Judges.

ALLEGHANY CORPORATION, Plaintiff Appellant,

v.

ALLAN P. KIRBY, RANDOLPH PHILLIPS, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants Appellees.

ORDER ON MOTION IN BANC TO RECALL MANDATE, ETC. April 12, 1965

A motion in banc having been made herein by counsel for certain shareholders of the appellant to recall the mandate and grant leave to intervene,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.

Further ordered that in the event that the appellants are desirous of prosecuting the appeal from the order of Hon. Sylvester J. Ryan, D.J., the argument of said appeal be and it hereby is set for April 19, 1965 and all papers to be considered in connection therewith shall be filed on or before April 15, 1965.

Further ordered that Hon. Sterry R. Waterman, Hon. Henry J. Friendly and Hon. J. Joseph Smith, C.J.J. have agreed to the foregoing disposition of said motion.

Further ordered that Hon. J. Edward Lumbard, Hon. Leonard P. Moore and Hon. Robert P. Anderson, C.J.J. did not participate in the decision of said motion.

[fol. 3341a] [File endorsement omitted]

[fol. 3342] Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 3342a]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 490—September Term, 1964.

Argued April 19, 1965

Docket No. 29652

ALLEGHANY CORPORATION, Plaintiff-Appellee,

—v.—

ALLAN P. KIRBY, CHARLES T. IRELAND, JR., and FRED M. KIRBY, Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant,

MARGARET L. HOLT and KATHLEEN L. McMAHON, Applicants-Appellants.

Before: Kaufman, Hays and Anderson, Circuit Judges.

Appeal from an order of the United States District Court for the Southern District of New York, Ryan, *C.J.*, denying an application to intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2).

Affirmed.

[fol. 3342b]

Stuart N. Updike, of Townley, Updike, Carter & Rodgers, New York, N. Y. (J. Howard Carter, Lee W. Meyer, Ronald S. Daniels, Richard J. Barnes, on the brief), for applicants-appellants.

Mark F. Hughes, of Willkie, Farr, Gallagher, Walton & FitzGibbon, New York, N. Y. (Vincent R. FitzPatrick, on the brief), for plaintiff-appellee.

Walter R. Mansfield, of Donovan, Leisure, Newton & Irvine, New York, N. Y. (John E. Tobin, on the brief), for defendants-appellees.

OPINION—April 21, 1965

Kaufman, Circuit Judge:

As Judge Friendly recently wrote, "The affairs of Alleghany Corporation, from its founding by the Van Sweringen brothers, have given rise to a flood of litigation that must be unparalleled in American corporation law." *Willheim* v. *Murchison,* —— F. 2d —— (2 Cir. Feb. 10, 1965). The aspect of that litigious history presently before us—which may occupy no more than a footnote when the definitive chronicle is written—involves an appeal by Margaret L. Holt and Kathleen L. McMahon ("the applicants"), as owners of 650 and 550 shares, respectively, of Alleghany preferred stock, from an order of the District Court denying them leave to intervene as a matter of right, pursuant to Fed. R. Civ. P. 24(a)(2), in a chapter of the history which recently occupied this Court's attention for more than a year. *Alleghany Corp.* v. *Kirby,* 333 F. 2d 327 (1964), *aff'd by equally divided Court en banc,* 340 F. 2d 311 (1965). Intervention is sought at this last-minute stage [fol. 3342c] of proceedings that trace back to 1954 in order to petition derivatively, on behalf of the Corporation, for a writ of certiorari from the Supreme Court to review the judgment dismissing Alleghany's complaint in an action to set aside the settlement of an earlier stockholders' derivative action. The District Court denied the application, finding and concluding, with reference to the explicit language of Rule 24(a)(2), that it was untimely and that the applicants "have had and do have adequate representation." We affirm.

Because the complex factual basis of the underlying litigation was fully delineated in this Court's earlier opinions, 333 F. 2d 327, it suffices to set out in skeletal chronological form the facts relevant to this appeal. The basic action, in

which the applicants seek to intervene, began in September 1960 as a stockholders' derivative suit brought by John D. Murchison, Clint W. Murchison, Jr., and Gerard L. Fossland (hereafter, together with affiliates, "the Murchison group") against the Corporation, Allan P. Kirby and others ("the Kirby group"). On June 26, 1962, after the Murchison group had, by shareholder vote, wrested control of the Board of Directors from the Kirby management, the late Judge Dawson approved the substitution of the Corporation as plaintiff and the dropping of the prior shareholder plaintiffs. On May 20, 1963, Judge Dawson dismissed the complaint, 218 F. Supp. 164, and the Murchison Board of Directors thereafter authorized the applicants' counsel in this action, who had represented first the Murchison group and thereafter the Corporation, to appeal to this Court. On December 4, 1963, two days after a regular panel of this Court heard oral argument of the appeal, the seesaw game between Murchison and Kirby continued and the Kirby group regained control of the Corporation. [fol. 3342d] The appeal, of course, continued and after we affirmed the judgment dismissing the complaint, one judge dissenting, on May 20, 1964, the Board of Directors, including defendant Kirby, voted unanimously to authorize a petition for rehearing *en banc*. The petition having been granted and the Court having announced on January 12, 1965, that it was evenly divided, the judgment below was accordingly affirmed.

The Alleghany Board of Directors thereafter consulted both the law firm that had represented the Corporation before this Court and now appears for the applicants, and other independent counsel who now appear for the Corporation in this phase of the litigation, concerning the advisability of petitioning the Supreme Court for a writ of certiorari and the responsibility of the Board towards the Corporation's shareholders in making that decision. On February 9, 1965, the alleged independent Board members —interested defendants Allan P. Kirby, Charles T. Ire-

land, Jr., and Fred M. Kirby having absented themselves from the meeting and one director abstaining for personal reasons—voted unanimously not to authorize a petition for a writ of certiorari. The papers filed with Chief Judge Ryan on the instant belated application for intervention reveal that the independent directors, in reaching that decision, considered not only the relatively modest cost of an application for certiorari, but also the consequences to the Corporation if the writ were granted and the judgment dismissing the complaint reversed.[1]

[fol. 3342e] Although the sophisticated applicants for intervention concededly "followed the fortunes or ill fortunes of the Alleghany Corporation through this litigation with pretty close attention," they allegedly did not learn of the Board's decision not to seek certiorari until April 4, 1965. Several days later, upon appellants' application, Chief Judge Ryan signed an order directing the Corporation, Kirby and the other defendants to show cause why intervention should not be permitted. After a careful hearing, he denied intervention, noting among other considerations that the applicants had watched closely the course of the litiga-

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[1] An affidavit by James W. Deer, a member of the Board, stated that the directors considered, *inter alia*, the following factors: (a) The likelihood that if certiorari were granted the litigation would continue for many years at great expense, and (b) that it would proceed against Allan P. Kirby alone "even though he was the only person . . . as to whom everyone . . . had agreed no case of fraud or wrong-doing had been made out." (c) If the settlement were reopened, the Corporation might lose control of Investors Diversified Services, Inc., an investment valued at more than $115 million and constituting over one-half its total assets. (d) Continued litigation would deprive the shareholders of a management able to concentrate on corporate affairs. (e) The likelihood, conceded in the District Court, that certiorari would not be granted. These reasons relate not to a fear of ultimate victory for the corporation, which the dissent perhaps misunderstandingly characterizes as "astonishing frankness," and much less to possible embarrassment and expense to Kirby. Rather, they are valid policy considerations hinged to the problems attendant upon lengthy continuation of possibly, if not probably, fruitless litigation.

tion from the outset but sought to intervene only on the eve of the deadline for filing a certiorari petition.[2]

We fully agree with the District Court's conclusion that, on the record before it, the decision of the independent members of the Board of Directors not to apply for certiorari, after consultation with independent counsel and full presentation and consideration of relevant business and legal implications, did not result in "inadequate repre-[fol. 3342f] sentation as a matter of law." We know of no proposition of law that permits shareholders, absent any allegations of bad faith, collusion or negligence, concededly neither present nor charged here, cf. *Sam Fox Publishing Co.* v. *United States,* 366 U. S. 683 (1961), to intervene, as of right, in order to continue litigation that independent members of the Board of Directors, acting in good faith and in the exercise of sound business judgment, have decided to terminate. Indeed, the independent directors who voted unanimously to take this step represent approximately 1,800,000 shares of Alleghany common stock whose equity would increase by $10,000,000 if the applicants' prophecy of ultimate victory were to be fulfilled.

In any event, it is necessary to uphold the order denying intervention at this stage, when this protracted litigation which has occupied so many judges' time for so long is taking its last gasp of breath, since we do not believe Judge Ryan abused his discretion in finding that the applicants' midnight-hour efforts were untimely. See *McKenna* v. *Pan American Petroleum Corp.,* 303 F. 2d 778 (5 Cir. 1962); *Tesseyman* v. *Fisher,* 231 F. 2d 583 (9 Cir.

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[2] On April 12, 1965, the last day for filing the certiorari petition, this Court denied the applicants' request to recall its mandate but set down the appeal from Chief Judge Ryan's order for April 19. On the same day, the applicants requested the Circuit Justice to extend the Corporation's time to petition for certiorari. Mr. Justice Harlan, "anticipating that [we would] act promptly," extended the time for filing the petition for a period of five days after our judgment on this appeal, or to and including April 29, 1965, whichever date proves to be earlier.

1955); *Simms* v. *Andrews,* 118 F. 2d 803 (10 Cir. 1941). See generally 4 Moore, Federal Practice §24.13 at 99 (2d ed. 1963). As we see it, the timeliness requirement, specifically articulated in Rule 24(a), is related to the question whether the shareholders' interests are or may be inadequately represented, for whether an application to intervene is prompt or tardy also turns on when the interests of the proposed intervenors were no longer properly represented. As we have noted, there are no allegations or claims that the Board of Directors acted in bad faith, fraudulently or dishonestly, but we shall assume, *arguendo,* that the applicants' interests may have been or are in- [fol. 3342g] adequately represented despite the absence of such charges because the Board of Directors was acting under what counsel, at oral argument, picturesquely characterized, but without anything more than his *ipse dixit,* as "the brooding presence" of the Kirby group.[3]

But even that *arguendo* assumption, when considered with the background of the applicants' asserted long-time interest in this litigation and the fact that the Kirby group regained direct control of the Corporation as long ago as December, 1963, would compel us to agree with the District Judge's findings and to conclude that he acted well within the bounds of his discretion in determining that the application to intervene—made sixteen months later—was untimely.[4]

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[3] Applicants' counsel expressly refused to characterize the Board as "dominated" by the Kirby group.

[4] If, as the dissent suggests, timeliness depends on whether the granting of intervention will prejudice or delay the conduct of the action by the original parties, then we are led to the implausible conclusion that there is a *right* to intervene regardless of the time that has elapsed since inadequate representation arose. In any event, since the applicants admittedly kept close watch on the course of this litigation and since it is conceded that there was no duty to inform all the shareholders of the decision not to authorize a petition for certiorari, we do not believe that the District Court abused its discretion.

We have specifically rejected the applicants' suggestion that adequacy of representation should, under these circumstances, be judged solely by the soundness or improvidence of the Board's decision to terminate the litigation. Suppose, for example, that instead of eight directors voting unanimously not to petition for a writ of certiorari, the same result was based on a five to three vote, with the three dissenting directors being fully independent (three hypothetical bishops or even the applicants themselves and a member of the law firm they have engaged). We have no doubt that after such a decision, and absent any claim of [fol. 3342h] fraud or wrongdoing, the shareholders could not intervene *as of right* on the basis of inadequate representation, notwithstanding the fact that this Court affirmed the lower Court judgment by a 4-4 vote.[5]

Adequacy of representation, at least in the context of this case, depends not on our assessment of whether the Board should have authorized a certiorari petition, but rather on whether shareholder interests were fully and fairly considered when the Board reached its decision. Stated somewhat differently, the mere fact that a particular decision is adverse to certain interests does not necessarily mean those interests were not adequately represented in the decision-making process or in the decision itself.

Chief Judge Ryan acted well within the bounds of his discretion in refusing to resuscitate this dying litigation which has received so much judicial attention in so many courts for so many years when he denied the application for intervention as untimely.

Affirmed. The mandate shall issue forthwith, all the Judges of this panel so directing.

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[5] If the applicants are aggrieved by any possible wrongdoing of the Board of Directors in deciding to terminate the litigation, the District Court's denial of intervention does not preclude a derivative suit based on such claims.

HAYS, Circuit Judge:

I dissent.

It seems to me to be naive to believe that the board of directors was not subject to the determinative influence of Kirby when it voted not to proceed with this case. No one who knows anything about the conduct of corporate enterprise considers that the major stockholder's withdrawal [fol. 3342i] from the room when a vote is taken amounts to anything more than an empty ceremonial.

If corroboration is needed for the proposition that this board of directors did not adequately represent the interests of the applicants for intervention, ample corroboration is to be found in the reasons given, with astonishing frankness, for abandoning the litigation. The principal reason given for not applying for certiorari is the fear that the corporation might win. One of the reasons given for not wanting to win is that a victory for the corporation would be embarrassing (and expensive) for Kirby.

The application for intervention was obviously "timely" within the meaning of Rule 24: The requirement of timeliness in that Rule refers not to some vague standard of laches but to the making of an application at a time when granting it will not prejudice or delay the conduct of the action by the original parties. There is no such prejudice or delay here. Nor, for that matter, was there any laches. The application was made promptly upon the discovery that the applicants' interests were no longer being adequately represented.

[fol. 3342j]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Present:

Hon. Irving R. Kaufman,
Hon. Paul R. Hays,
Hon. Robert P. Anderson,

Circuit Judges.

ALLEGHANY CORPORATION, on behalf of themselves and all other stockholders similarly situated, Plaintiff-Appellee,

v.

ALLAN P. KIRBY, FRED M. KIRBY, CHARLES T. IRELAND, JR., Defendants-Appellees,

RANDOLPH PHILLIPS, Defendant,

MARGARET L. HOLT and KATHLEEN L. MACMAHON, Proposed Intervenors-Appellants.

JUDGMENT—April 21, 1965

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed with costs to the appellee, Alleghany Corporation.

[fol. 3342k] [File endorsement omitted]

[fol. 33421]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

MARGARET L. HOLT, ET AL., Petitioners,

vs.

ALLAN P. KIRBY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—April 13, 1965

Upon Consideration of the application of counsel for the petitioners, and of the opposition thereto,

It Is Ordered that the time for filing a petition for writ of certiorari be, and the same is hereby, extended for a period of five (5) days after the judgment of the United States Court of Appeals for the Second Circuit on the "intervention" appeal, or to and including April 29, 1965, whichever date proves to be earlier.

John M. Harlan, Associate Justice of the Supreme Court of the United States.

Dated this 13th day of April, 1965.

[fol. 3342m] Memorandum of Mr. Justice Harlan.

Anticipating that the Court of Appeals will act promptly on the "intervention" appeal now set for hearing on April 19, 1965, I am constrained to extend petitioners' time for filing a petition for certiorari from the judgment of the Court of Appeals rendered January 12, 1965, to and including five days next following the Court of Appeals' decision of the intervention appeal, or to and including April 29, 1965, whichever date proves to be the earlier. Petitioners may, within the governing period, apply to me for a further extension of time to file the aforesaid petition

for certiorari. Such further application may be made on the papers presently before me, supplemented by any additional papers that either side may wish to submit. I, of course, intimate no view upon any phase of the matters in controversy.

J. M. H.

April 13, 1965.

[fol. 3342n]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1964

MARGARET L. HOLT, ET AL., Petitioners,

vs.

ALLAN P. KIRBY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—April 27, 1965

Upon Consideration of the application of counsel for petitioners and of the oppositions of respondents thereto,

It Is Ordered that the time for filing a petition for certiorari in the underlying controversy be, and the same is hereby, extended to and including May 12, 1965. This order is conditioned, however, upon the filing of a petition for certiorari on the intervention issue on or before that date.

John M. Harlan, Associate Justice of the Supreme Court of the United States.

Dated this 27th day of April, 1965.

[fol. 3342o] Memorandum of Mr. Justice Harlan.

The underlying controversy and the intervention issue are mutually dependent, and although no application is

made to me with respect to the latter, I think it is appropriately involved in the proper disposition of this request for a further extension of time within which to petition for certiorari in the underlying controversy.

Because the judges below were so sharply divided on both phases of the matter, I am constrained to give petitioners an opportunity to have them considered together by the Court. However, I do not think the matter should go over the summer, which would be the result were I to grant the full further extension now sought or if the time for filing for certiorari on the intervention issue remains unaccelerated.

Accordingly, I shall extend petitioners' time to file for certiorari in the underlying controversy to and including May 12, 1965, on condition, however, that their petition for certiorari on the intervention issue is also filed by that date. If respondents file their papers in opposition on or before May 24, 1965, this should enable the Court to act on both petitions before the end of this Term. In view of the time elements involved, the parties need not proceed on printed papers.

J. M. H.

April 27, 1965.

[fol. 3343]

SUPREME COURT OF THE UNITED STATES

No. 1157, October Term, 1964

MARGARET L. HOLT, ET AL., Petitioners,

v.

ALLEGHANY CORPORATION, ET AL.

ORDER ALLOWING CERTIORARI—June 1, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

The case is consolidated with No. 1158 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 3344]

SUPREME COURT OF THE UNITED STATES

No. 1158, October Term, 1964

MARGARET L. HOLT, ET AL., Petitioners,

v.

ALLAN P. KIRBY, ET AL.

ORDER ALLOWING CERTIORARI—June 1, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is consolidated with No. 1157 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.